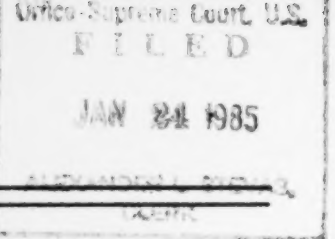


Number 84-718



IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

ROBERT L. MENDENHALL, Petitioner,

vs.

THE UNITED STATES OF AMERICA, ET AL.

**PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**APPENDIX TO
PETITIONER'S REPLY TO RESPONDENT'S
BRIEF IN OPPOSITION**

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109 pp

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

UNITED STATES OF AMERICA,)	
)	
Contestant,)	Claim Nos.
)	N-065732
vs.)	N.-065733
)	
FRANK R. SULLIVAN,)	
)	
Contestee.)	
)	

REPORTER'S TRANSCRIPT OF HEARING
OF

FEBRUARY 18, 1971 taken at
United States Federal Building
300 Las Vegas Boulevard, South
Las Vegas, Nevada, 9:30 o'clock A.M.
Room 4-612

Reported by:

MANPOWER, Inc. of Southern Nevada
515 Las Vegas Boulevard South
Las Vegas, Nevada 89101
(702) 384-1082

HEARING EXAMINER:

**DEAN F. RATZMAN
OFFICE OF THE HEARING EXAMINER
ROOM W. 2426
2300 Cottage Way
Sacramento, California 95825**

**FOR THE BUREAU OF
LAND MANAGEMENT:**

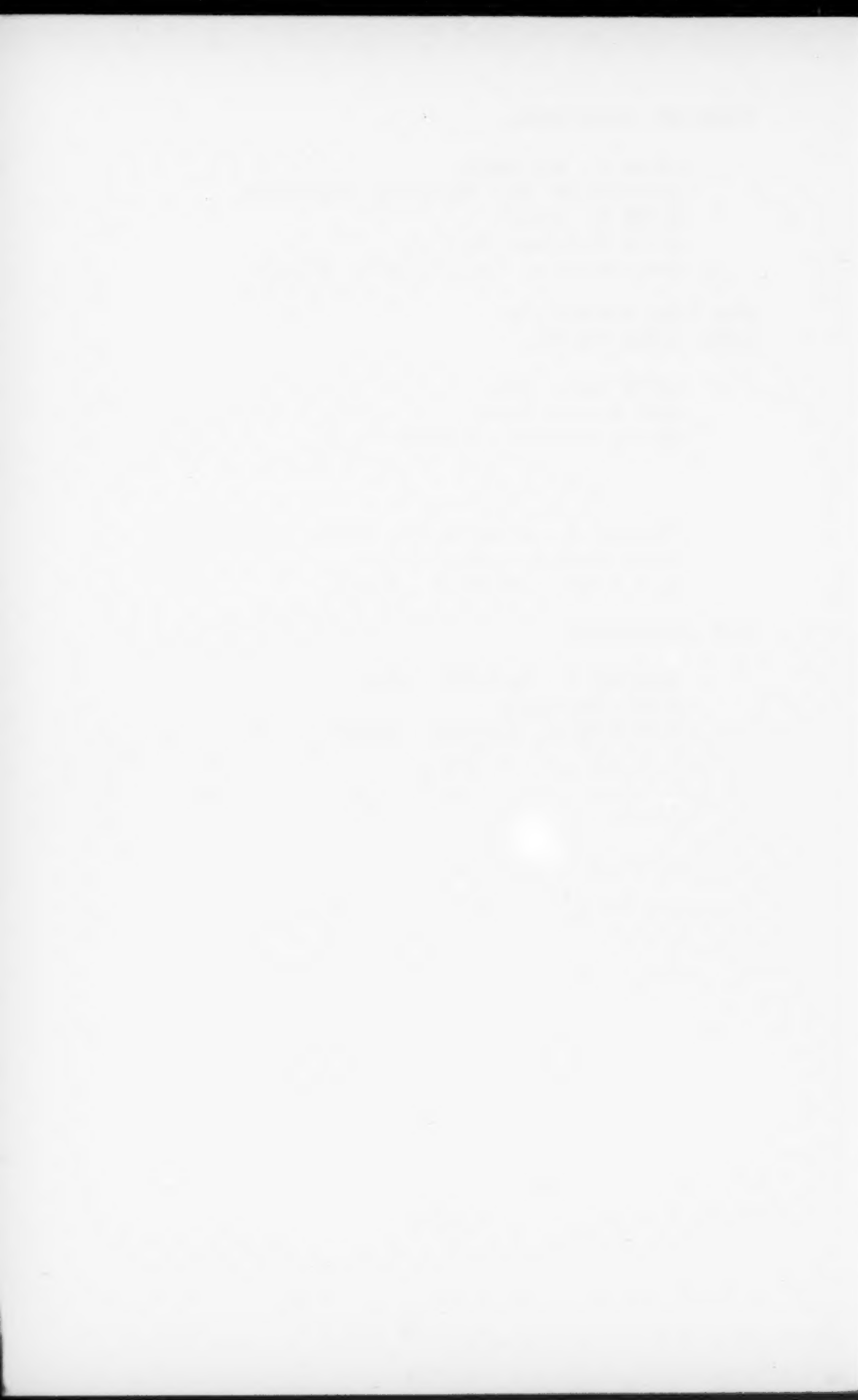
**OTTO AHO, ESQ.
300 Booth Street
Reno, Nevada 89502**

and

**THOMAS E. SCHESSLER, ESQ.
1859 Decatur Boulevard
Las Vegas, Nevada 89108**

FOR CONTESTEE:

**ROBERT J. McNUTT, ESQ.
P.O. Box 539
Las Vegas, Nevada 89101**



No.	Exhibits	Page
G-1	Radial map of Las Vegas area showing contested claim relative to City of Las Vegas	2
G-2	Index map of unpatented placer mining claims in the Lone Mountain Canyon area, prepared by Don Fisher	2
G-3	Aerial photo taken April 15, 1985	2
G-4	Location Notice, Charleston No. 24 claim	4
G-4A	Location Certificate, Charleston No. 39 Claim	4
G-5	Location Notice, Charleston Spur Claim	5
G-5A	Location Certificate, Charleston Spur No. 1 claim	5

INDEX OF WITNESSES

Witness	Direct	Cross	Redirect	Recross
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(Page numbers have no meaning to this duplication of original transcript)



BY THE HEARING EXAMINER: The United States of American versus Frank R. Sullivan, Contest Nos. N-065732 and 065733. This is the time and place scheduled for the hearing, and notice dated January 11, 1971. Mr. Frank R. Sullivan, the contestee, is present in the hearing room accompanied by his consultant, Mr. Robert J. McNutt. Would the government counsel please enter his appearance.

BY MR. AHO: Yes. Otto Aho, field soliciter, U.S. Department of the Interior, Reno, Nevada. . .

BY THE HEARING EXAMINER: Did the government counsel or Mr. Sullivan or his consultant wish to take up any matter respecting exhibits or stipulations prior to the completion of all --.

BY MR. AHO: Oh, we might take five minutes just to explain the exhibits.



BY THE HEARING EXAMINER: Do you want this to be on the record?

BY MR. AHO: No. Let this be off the record for five minutes.

(Off the record discussion held.)

BY THE HEARING EXAMINER: We will be on the record. Mr. Sullivan, Mr. McNutt, the government has posted three proposed exhibits, 1, 2, and 3. There has been some discussion off the record relating to these exhibits. Do you have any objection to the introduction of those three exhibits for purposes of explaining this case:

BY MR. SULLIVAN: This map here, that you've got here, doesn't show about \$15,000 worth of work.

BY MR. AHO: Then you could add it on when you testify and mark down there what you say you have done. Yes, you could do that.

BY MR. SULLIVAN: It doesn't show what I done in order to market this gravel.



BY MR. AHO: You could comment on that when you testify.

BY THE HEARING EXAMINER: Well, subject to that understanding, Mr. Sullivan, do you have any objection to the exhibits? You can testify and show additional work.

BY MR. SULLIVAN: No objection at all.

BY THE HEARING EXAMINER: Exhibit nos. G-1, G-2 and G-3 as marked, are admitted without objection and subject to the understanding that Mr. Sullivan and his consultant will have the right to testify and mark on the exhibits and show other features or other work that they testify was done.

BY MR. AHO: I am ready to proceed. I call Mr. Schessler.

BY THE HEARING EXAMINER: You may proceed.

THOMAS E. SCHESSLER, having been first duly sworn to testify to the truth, the



whole truth and nothing but the truth,
testifies as follows:

DIRECT EXAMINATION

BY MR. AHO:

Q Please state your full name and
title of your present position.

A My name is Thomas E. Schessler,
S-C-H-E-S-S-L-E-R; I am employed as a
mining engineer and lands and minerals
staff officer with the Las Vegas District
of the Bureau of Land Management.

Q Please relate briefly your
educational and professional background.

A I graduated from the University of
Montana in 1952 with a degree in geology
and since that time I have been employed in
both private and public work: U.S.
Geological Survey, various mining companies
and U.S. Forest Service, and the Bureau of
Land Management.

Q In your position with the Bureau
of Land Management have you been, or are
you now required, to examine mining claims?



A I am.

Q In connection with your official duties with the Bureau of Land Management, have you examined sand and gravel mining claims or deposits in the Las Vegas area?

A I have.

Q How many, and over what period of time?

A I haven't actually counted them. I would be somewhere from twenty to thirty claims in the Las Vegas Valley for sand and gravel.

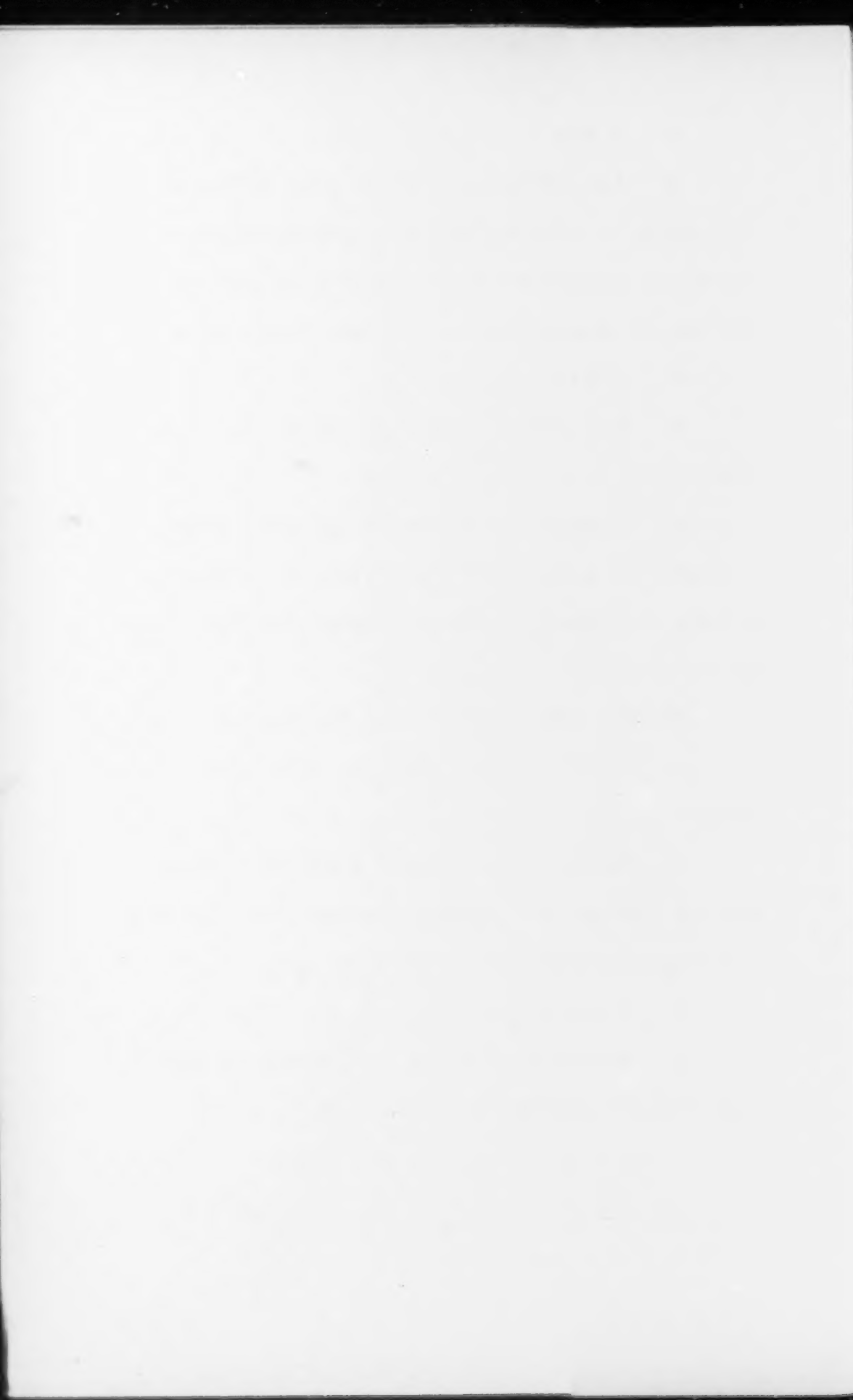
BY MR. AHO: Over what period of time?

A A little bit better than four years.

Q Have you examined sand and gravel mining claims or deposits other than in the Las Vegas area?

A I have.

Q Where else have you examined sand and gravel claims or deposits?



A In the states of Montana, Idaho, Washington, and in the eastern states of Pennsylvania, Vermont, Kentucky, Virginia, West Virginia and in Ohio.

Q Approximately how many of these other claims did you examine?

A I haven't counted, but I would estimate around a hundred.

Q Did you receive or make any preparation to study generally before you began your examination of mining claims in the Las Vegas area?

A I did.

Q What preparations or studies did you make?

A When coming into a new area, you always learn as much about the geology as possible, which means reading the publications available. There is a good one on Clark County by the U.S. Geological Survey in the State of Nevada, and I also researched the District Office files for



work that had been done in years past by other mining engineers employed by the Bureau.

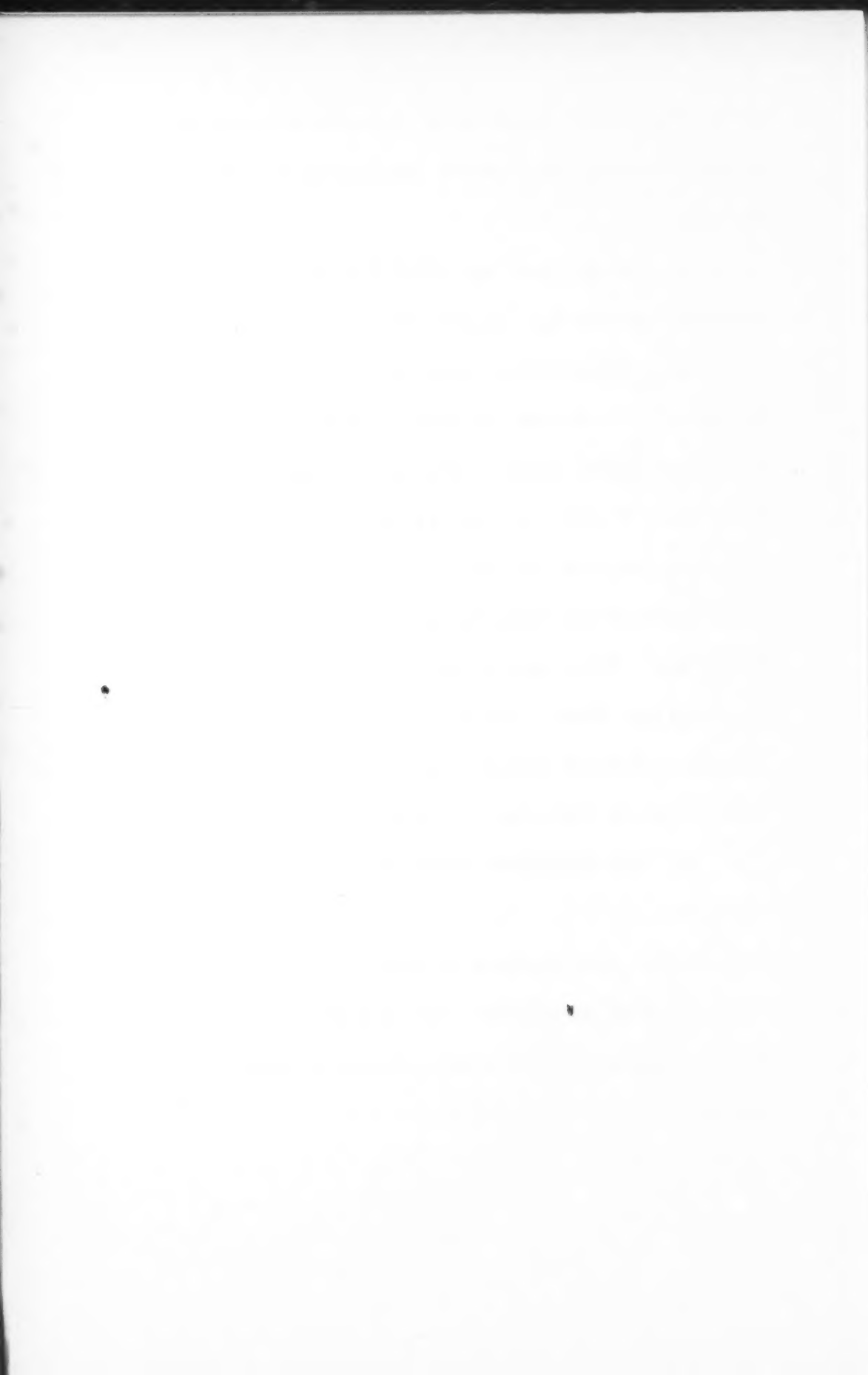
Q When and by whom were the contested claims located?

A They were located by Mr. E. H. Browner. I think he was the sole locator of Charleston Spur, now known as Charleston Spur No. 1 and he had seven co-locators on the Charleston 24/39 claim. I have here some certified copies of the Location Notices. They were located in -- Charleston Spur, on February 28, 1955 and the Charleston placer no. 24 was located on the 29th of February, 1955.

BY THE HEARING EXAMINER: Off the record.

(Off the record discussion held.)

BY THE WITNESS: This Location Certificate is for Charleston placer no. 24.



BY MR. AHO: We offer that as exhibit G-4.

BY THE WITNESS: That is the Location Notice which was recorded. Now here is a Certificate of Location for the same lands, but described as Charleston placer no. 39. And this is the reason for calling that --

BY MR. AHO: Well, we'll go into that a little later. We'll offer that as exhibit no. --.

BY THE HEARING EXAMINER: We'll make that G-4-A.

BY MR. AHO: All right.

BY THE WITNESS: This next one is the Location Notice for the Charleston Spur.

BY THE HEARING EXAMINER: We post exhibit G-5.

BY THE WITNESS: And next, and last, is Location Certificate for Charleston Spur no. 1, which describes the same land as the Charleston Spur Location Notice.



BY THE HEARING EXAMINER: We post exhibit G-5A.

BY MR. AHO: We offer exhibits G-4, G-4-A, G-5 and G-5-A.

BY THE HEARING EXAMINER: Exhibits G-4, G-4-A, G-5 and G-5-A are received without objections.

Q (By Mr. Aho) Do you know when the contestee, Mr. Sullivan, acquired the contested claims?

A I do not. I did not do any research on that myself.

Q The Complaint in this proceeding refers to the Charleston no. 24 is also Charleston no. 39 and extension 39 of the Charleston placer mining claims. Do you know why the three different names are used by the one claim?

A Yes. The original Location Notice for the Charleston no. 24 which would be exhibit no. G-4, is for Charleston no. 24, and it describes the lands to be -- the

Location Certificate which was filed later describes the same lands, but calls it Charleston placer no. 39.

Q Referring to what exhibit?

A This is on exhibit G-4-A. Now, substantially the same thing is true of the Charleston Spur claim. The Location Notice, exhibit no. G-5, was filed and followed by the SLocation (sic) Certificate, called Charleston Spur no. 1, and the same lands are described.

BY THE HEARING EXAMINER: When did the phraseology for extension 39 of the Charleston come from?

BY THE WITNESS: Extension 39 was then used later to describe the same lands in Proofs of Labor, so that the names apply to the identical land.

BY MR. AHO: Will that satisfy the Examiner; the reason for three different names used in the Complaint?



BY THE HEARING EXAMINER: Yes. That's all right now.

Q (By Mr. Aho) What is the legal description of each of the contested claims?

A They are rather long. I shall have to read them from my notes.

BY THE HEARING EXAMINER: I don't know if that will have to be done. The Complaint contains the description. I wonder if the witness would review that to indicate whether or not it is correct.

BY MR. AHO: The descriptions are shown on the Location Notices anyway, are they not?

BY THE WITNESS: They are shown on the Location Notices. They are not complete in the Complaint, however, they are in the appropriate Sections and Townships and Ranges.

BY MR. AHO: All right. Before we get into your testimony, I think you should go



to exhibits G-1, G-2 and G-3 and state briefly what each exhibit purports to show and represent.

BY THE WITNESS: Exhibit G-1 is a map of the Las Vegas area. It was made to show various distances. The circles represent distances from the center of town; the center of town here taken as the corner of Fremont and Main Streets. Each circle has a radius of 2-1/2 inches, so that as you go to each circle, you extend the radius of 2-1/2 more inches. And that is used as an exhibit to show the relationship, geographically and in distance from the center of town to the claims that we are talking about today, as compared to other sand and gravel operations in the Las Vegas area.

BY MR. AHO: Now, you stated that each circle represents a distance of 2-1/2 inches.

BY THE WITNESS: 2-1/2 miles.



Q (By Mr. Aho) And the claims are indicated in red in the northwest corner, is that correct?

A Charleston 24/39 is indicated in red. The Charleston Spur claim is indicated in blue. Exhibit G-2 is a map that was prepared in the Las Vegas District Office. It is a larger scale than exhibit G-1 and the claim locations have been plotted on this map, relative to some of the hard rock geology of the area, literally speaking. A road and the Charleston 24/39 claim is shown in yellow. The Charleston Spur is shown in green.

Q You also indicate certain improvement on there, do you not?

A I do. I do not indicate all improvements on this map.

BY MR. AHO: We will go into that detail later.



A Exhibit G-3 is an aerial photograph. The pictures for this were flown for the Bureau of Land Management in April, 1965. The precise date -- on April 15, 1965. The map is a compilation made by the same people who took the original pictures, American Aerial Surveys in Covina, California. I ordered the mosaic made in October, 1969, received it on October 27, 1967. I asked that the American Aerial Surveys people use the survey information available to them to plot the Sections on the aerial photographs, and this is why the Section lines are shown as a part of the mosaic which makes up the photo. You will notice we have complete survey information for Sections 35 and 36 Township 21 S. -- 19 S., I beg your pardon -- Range 59 E., and we have the same information for 20 S., 59 E. But here in Section 34 of 19 S., 59 E. the survey information is less



complete. There is information, the distance between the corners of Sections 33 and 34 and Sections 34 and 35 on this east-west line on the south boundary of the Section. Information is less complete to the north; however, on the survey plat this line on the west side of Section 34, its entire distance is given on the survey, although it is not plotted for its entire distance on this aerial photograph.

Q Now, what do the red bordered area indicate?

A The red bordered area indicate the outlines of the claims with which we are dealing today. The bordering Sections 35 and 36 is Charleston no. 24/39 claim. The outline in Section 3 of 20 S., 59 E., and in 34, 19 S., 59 E. are the two separated portions of the Charleston spur as they are described in the Location Notice.

Q You have added on there also the description of the claims underneath the respective claims, you have not?



A I have.

Q In connection with your official duties, were you assigned to make an examination of the placer mine claims which are the subject of this proceeding?

A I was.

Q Why were you assigned to make an examination of the claims?

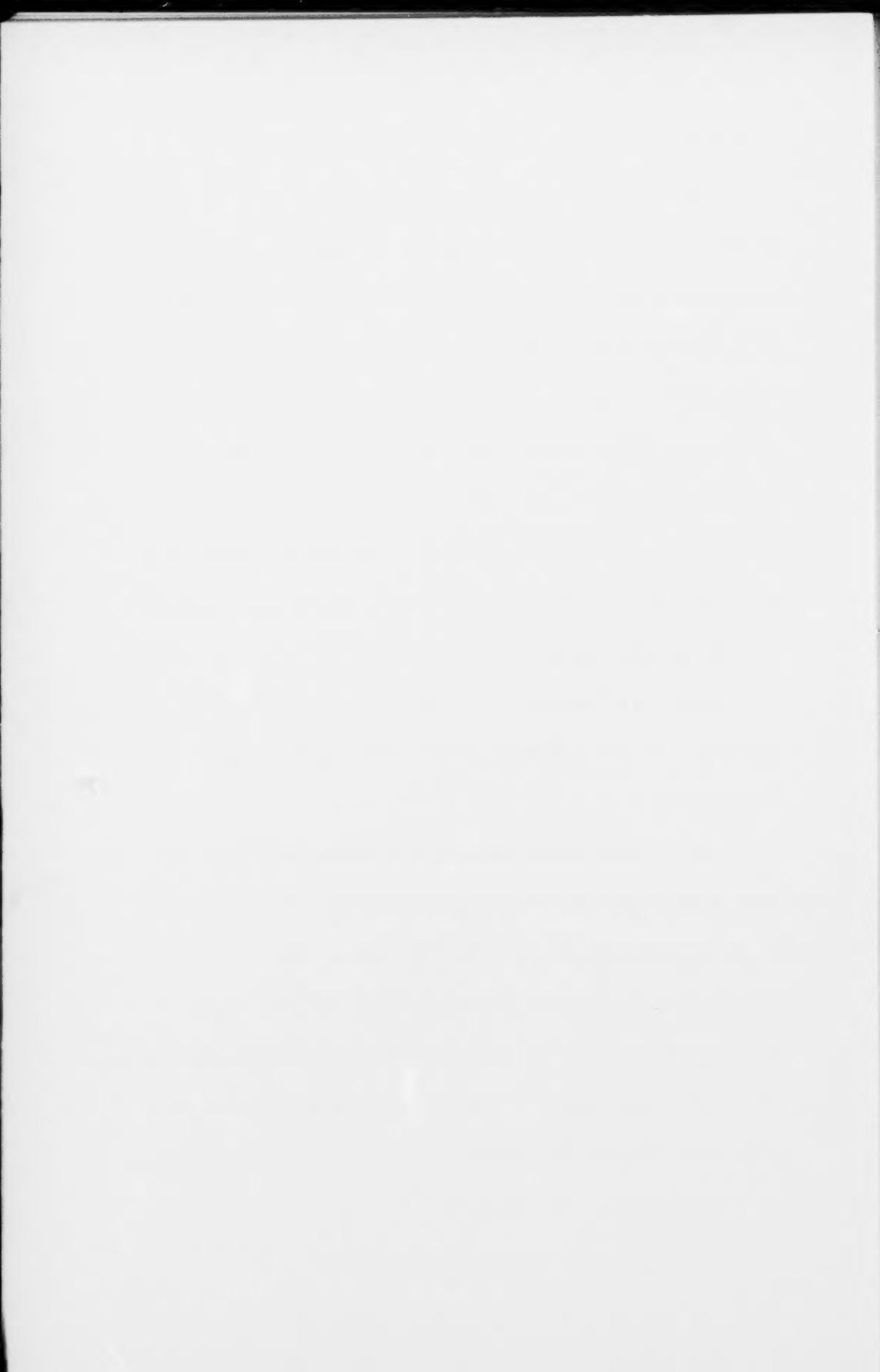
A The hearing was coming up and the mining engineer who did the original work -- original examination work on which the contest was based -- the complaint is based, is no longer with the Las Vegas District.

Q And upon whose recommendation was the pending contest proceeding initiated?

A It was initiated upon the recommendation of Donald G. Fisher, the mining engineer I referred to.

Q At that time he was employed in the Las Vegas Office?

A Yes, he was.



Q And where is Mr. Fisher now?

A Mr. Fisher now works under the direction of the Phoenix District, Phoenix, Arizona, Bureau of Land Management. I believe he is based in Kingman, Arizona.

Q Did you make an examination of the contested claims?

A I did.

Q When?

A I examined them twice: on January 22, 1971, and again on February 11.

BY MR. AHO: Also 1971.

A 1971. Yes, sir.

Q Did anyone accompany you or any of your examinations of the claims?

A Frederick B. Mullin, a geologist employed by the Las Vegas District, Bureau of Land Management, accompanied me on the January date. I was alone on the February date.

Q How did you identify the exact area upon which each claim is located?



A I started with the U.S. Geological Survey topographic maps, and the descriptions of the mining claims as given in the records. I went out to the ground and I found various corners on the survey, actual survey markers. I identified myself on that map, on the aerial photograph and transferred that information -- rather, checked that information against the map already prepared by Mr. Fisher.

Q From a geological standpoint, where the claims are located to which you refer to exhibits, refer by exhibit numbers.

A Referring to exhibit G-1, the claims are northwest of the City of Las Vegas. They are approximately eleven airline miles northwest, and about twelve miles by road. By going out Tonopah Highway, about seven miles to what we call the Lone Mountain Road. You turn off on that road to the west and it's another five or six miles to the area of the claims.



Q What is the topography and elevation of the area where the claims are located?

A The topography consists of a draw, or a number of draws; one major draw and some gravelly bands extending eastward from the foot of the mountains. The Charleston Spur claim is in the more mountainous part of the area and in terms of elevation, I checked the maps, checked the elevation and must look for it in my notes. The elevation varies from, on the east above sea level on the east end to about 3,350 or 60 feet above sea level here on the west end of Charleston Spur. I beg your pardon, Charleston 24/39. Charleston Spur the elevation varies considerably, but goes as high as about 4,000 feet.

Q What is the geology and mineralization of the area where the claims in question are located?



A Referring to exhibit G-2, the wavy pattern, the shaded pattern on the map indicates big outcrops of the Goodsprings dolomite. The Goodsprings dolomite is cambrian-ordovician in age, paleozoic, and it varies in color from light tan to dark grey. It contains chert nodules and lenses or bands and laminated kenclusion (sic), which is an iron oxide. The remainder of the area consists mostly of the alluvial outwash from the eroded hardrock formations. Drainage is to the east in this area.

Q How did you make your examination of the claims in question and of what did your examination consist?

A I made the examination by going on the ground with a four wheel drive vehicle both times, and of course we looked for whatever improvements there were, and -- we and I. The first time there were two of us. We walked some areas of the claims and



the examination was visual. We looked at the property and compared it with other areas.

Q At the time of your examination, what was the appearance of the ground on which the claims are located with respect to physical evidence of development and workings?

A I will refer to exhibit G-3, primarily, and to exhibit G-2. On exhibit G-3, I have placed nothing that was found on the ground. In other words, I did no writing. All I did was outline the boundaries of the claim so that this shows the properties as of April 15, 1965. There were no changes made on the photograph. There were two major -- one could call them major -- cuts on Charleston 24/39.

Q As of 1971?

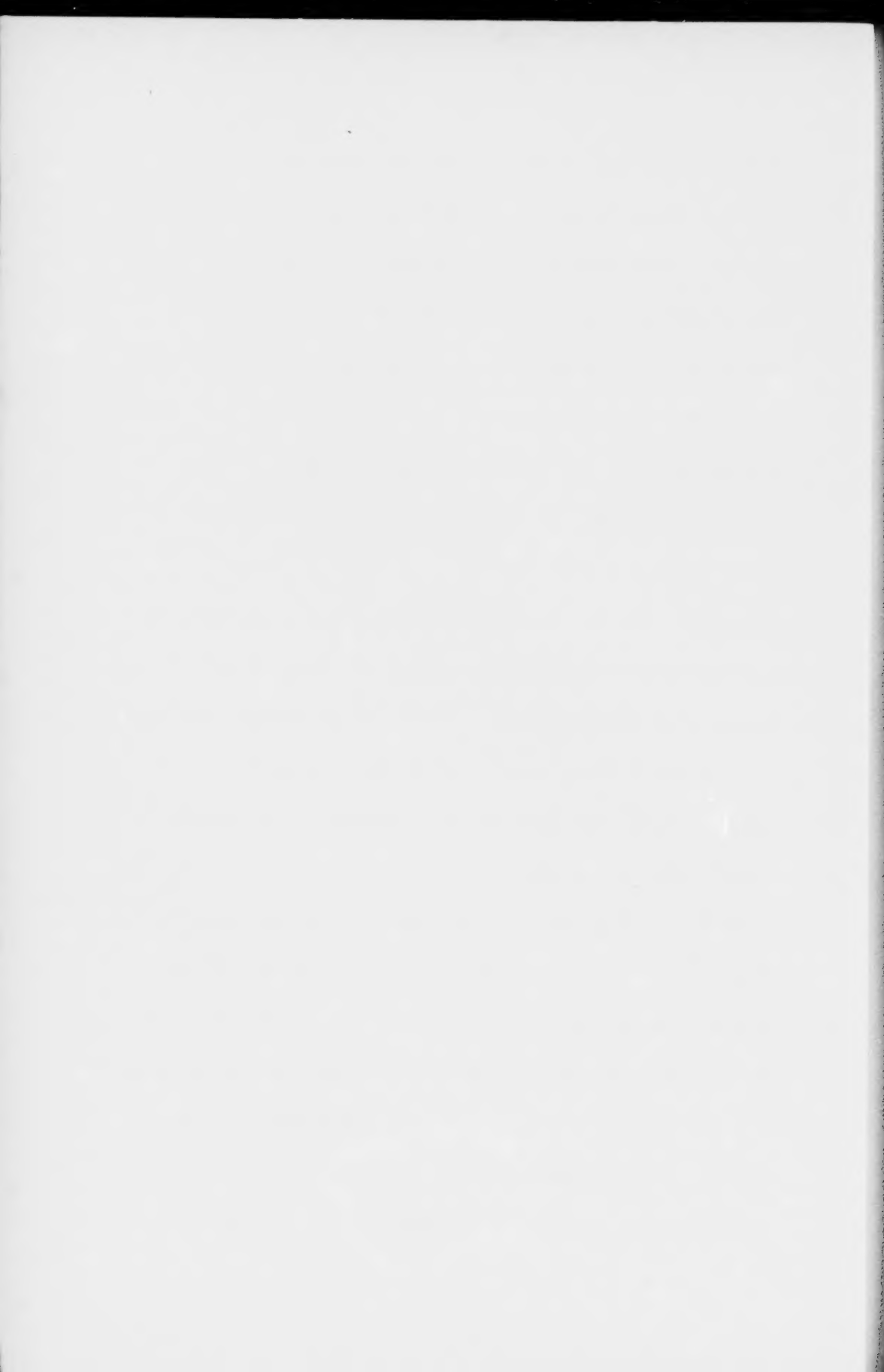
A As of February 11 and January 22, 1971. These consisted of bulldozer cuts, both near the east end of the claim; one



right near the east end line. The cut on the east end line -- I paced it only -- was about 245 by 130 feet, and the gravel was piled up on the south edge of a kind of radial excavated area and draw. There was nothing removed, as far as I could determine. The other cut was a bulldozer cut about an eighth of a mile farther west -- a quarter of a mile farther west, excuse me, and still within the Charleston 24/39 claim. Unfortunately, I did not write it down, the dimensions of this cut. It's fairly large. As I recall, it's about 15 feet wide at one end and probably 75 feet long, and as much as 15 feet deep. Again, the material that came out of it seemed to still be there. It was piled up on the east end of the cut. In addition, there were some bulldozer cuts of older vintage, two or three of them in this portion of the Charleston 24/39 called 13A which was a piece of property held by -- also by



someone else, and a cut or two on 11. These were older. I did not measure them. The material seemed all to have been in place, near the bulldozer cut. There were also a number of piled stockpile rock in the very northwest corner of the portion shown as 11 of Charleston 24/39. I estimate them to be a total quantity of nearly 2 or 300 yards. I don't know whether these bulldozer cuts in 13A and 11 portions of Charleston 24/39 -- I don't know who made them. They have been there for some time, and I did put them on this map. Now, in addition, there is a road that has been built up the Section line, or rather, it's easier to describe up the Township line, between 19 and 20 S. from some distance to the east, up adjacent to 24/39 along this Township line and one spur of an older road, the old Lone Mountain Road, that comes south into the east end of Charleston 24/39. In addition to that,



there is an old trail that traverses almost the entire length of Charleston 24/39 claim. I saw no improvements on Charleston Spur no. 1.

Q And did you examine the workings and other openings on the contested claims?

A Yes.

Q In your examination of these workings and other openings, of what did your examination consist?

A Again, the examination was visual. The material was sand and gravel.

Q What is the nature and composition of the material found on the contested claims? Is it similar on both claims?

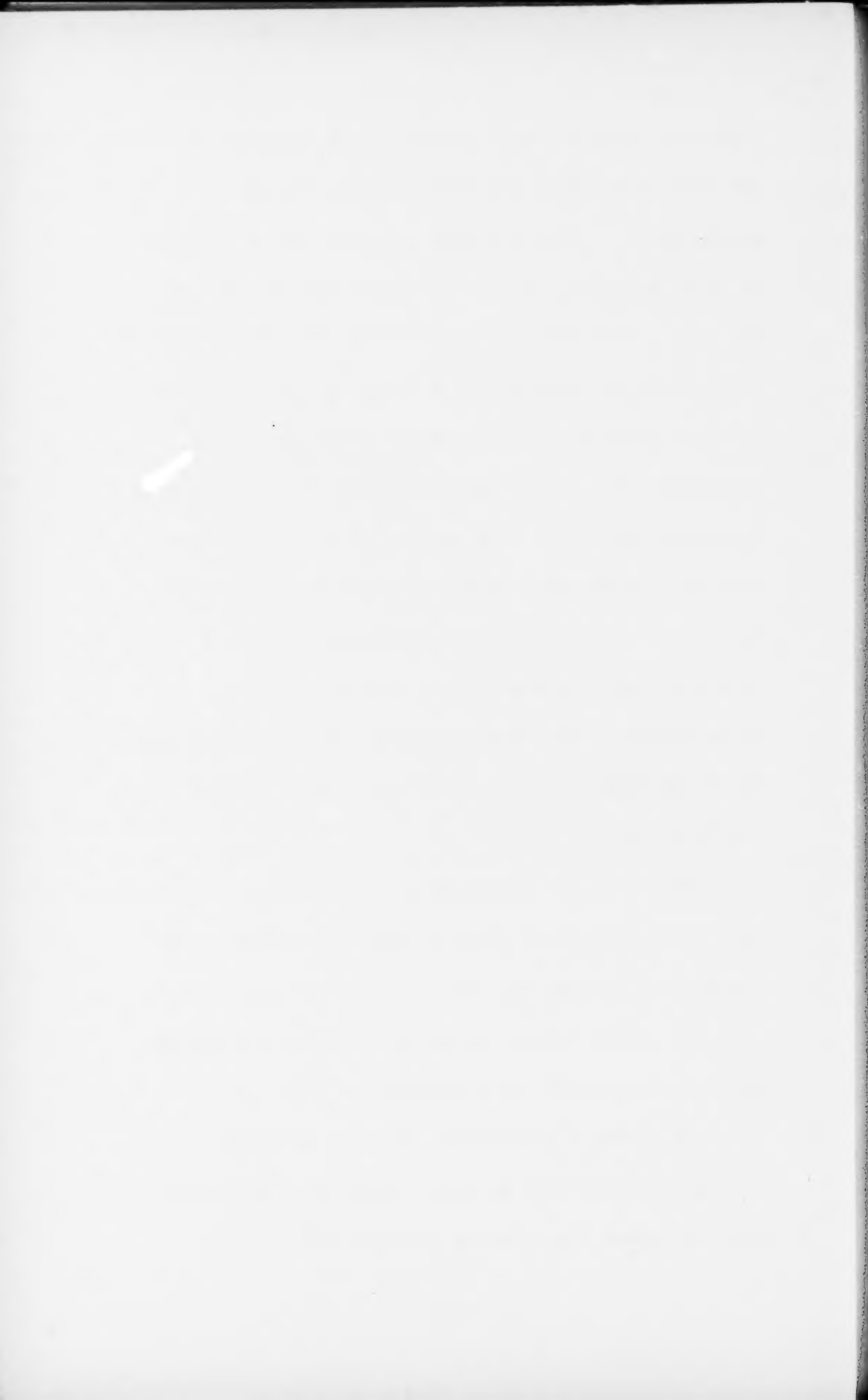
A No, it is not. There are similarities on Charleston 24/39 and the material is pretty much the same. There are two types, one might say, of sand and gravel in this claim. One you might refer to as bank gravel which would be the fan portions of the sand and gravel. The other

one you could call the stream gravel which, on the west end of the claim, is most prominent. The stream gravel is a little better washed, a little cleaner than what we call the bank gravel. On the Charleston Spur no. 1, there is a very little bit of stream gravel in the draw that goes up through the lower portion of the claim and extends up into the upper portion of the claim. However, most of the Charleston Spur no. 1 is bedrock outcrop of the Goodsprings formation previously described. The bedrock is not exposed as such on Charleston Spur -- these names -- on Charleston 24/39.

Q In your opinion, for what purposes may the sand and gravel material be used that are found on the contested claims?

A For just about any uses to which sand and gravel are normally put.

Q What portions of the claims contain sand and gravel that you believe may be used for these purposes?



A The Charleston no. 24/39, I would say, substantially all of it. At least as far as surface indications and depth of the bulldozer cuts. The Charleston Spur no. 1, there is a small area of sand and gravel, probably not more than three acres of stream type, or at least alluvial, a little bit better washed sand and gravel than you would find in the fans. On the upper portion of the Charleston Spur no. 1, the sand and gravel, as such, would be negligible. These are bedrock exposures.

Q What processing, if any, would be required to make the material on the claims in question suitable for these uses?

A It would depend on the use, but some of it, if it were used for fill material, base material, some of it probably wouldn't even require screening. These seems to be enough fines that it would tap very well, but it could be processed to almost any use required for



sand and gravel by washing or screening, and crushing, perhaps, depending on specifications.

Q Are the claims involved in this proceeding located on land consisting almost exclusively of sand and gravel?

A Again, Charleston 24/39 is. Charleston Spur is not.

Q That's where this small area is.

A Except for the approximately three acres to which I referred.

Q What are the general and normal uses for the general run of sand and gravel deposits in the Las Vegas area?

A The predominant use, as in most cases, is for fill material, base materials for roads. Other uses are in concrete, ready mix concrete. Sand can be used in plaster, but since I ran no tests, I cannot say for certain, but I doubt that sand as such is a very important constituent up there. I would not swear to it.

Q How does the sand and gravel material found on the contested claims compare with the other sand and gravel claims and deposits you examined in the Las Vegas area?

A They are similar, except that there are two basic types of deposits in the Las Vegas Valley. On the east and west sides of the Valley, sand and gravel deposits consist mostly of the limestone-dolomite fragments eroded from Frenchman Mountain and portions of the Spring Mountains to the west. On the south end of the Valley, Black Mountain or McCullough Mountains, are tapped by volcanic rocks so that the sand and gravel deposits on the south end of the Valley will also be volcanic in origin. The carbonate rocks, the dolomite and limestone usually have a somewhat higher specific gravity than do the volcanic rocks. The volcanic rocks are frequently somewhat harder, but probably more brittle than the carbonate rocks.



Q These claims are located on the west side of the Valley?

A They are, on the northwest side of the Valley.

Q Are there any differences with the material found on these claims and the other sand and gravel deposits or claims on the west side of the Valley?

A No real material differences, no. You may have variations in size gradations and so on. That will vary from place to place, depending on the distance from the mountain and the origin of the materials. That would be the base difference. However, in some areas there is a touch caliche, almost a concrete-like material in appearance that underlies the sand and gravel deposits or, in fact, outcrops to the surface. Now, this caliche was not observed here. There are little thin cemented areas, but they are easily broken. Caliche would not be a problem so far as is known.



Q Were you able to make any determination if there had been any actual production and sale of materials from either one of the contested claims?

A To the extent of the information that I observed, or that facts that I observed, the situation on the ground, this is the extent of that. And it indicates that none was marketed or removed.

BY MR. SULLIVAN: On none of the claims?

BY MR. AHO: You can testify to that later.

Q (By Mr. Aho) In your employment with the Bureau of Land Management as an examiner, in your examination of a mining claim, were you required to make recommendations to your supervisors as to whether or not a contest should be initiated against the claims?

A I am.



Q In making your recommendations on sand and gravel mining claims, what criteria or factors do you use or consider in making your recommendations?

A The first criteria to which probably the other are tied, is what we call the prudent man clause. It is the recognized criteria in mining law. There must be such a discovery of valuable mineral within the limits of each claim as would warrant a prudent man, in the expenditure of his labor and his means, with a reasonable prospect of success in developing a profitable or paying mine. The prudent man, he has to have, or should have at least a -- material must be -- he must be able to extract it, remove it and market it at a profit. In order to extract it, remove it and market it, he must have a sufficient material, must have a proximity to market and one of the things -- bona fides in development are important here



because they tend to show how much was done to develop the property and to show what is in the property. And there must be a market, a present market, and a market as of the time of discoveries for the claim.

Q What about the status of the land?

A Of course, the land must be open to location at the time the claims are located. The research I have done indicated that the land was open to location, so the claims are -- were properly located on lands open for location.

Q At the present time, are there any conflicting uses for the land involved in this proceeding?

A Not on the lands that are covered by these claims.

Q You did mention the criteria of bona fides in development and what is your opinion regarding the bona fides in development regarding -- well, first I

better ask, what do you mean by bona fides in development?

A Bona fides in development are the work that was done to show the quantity and quality of material on the property, getting it ready for production and marketing. This may require drilling, bulldozer cuts, providing access, any number of things. Physical work on the ground.

Q As of January, February, 1971, what is your opinion regarding the bona fides in development with respect to the two contested claims?

A I will refer to the exhibits G-2 and G-3. As of these dates, there was some work shown on the ground, including a road, which I understand by conversations with Mr. Sullivan, was built by or at his request. The road follows the Township line between Townships 19 and 20 S., and it is a good gravel road, from near the



Tonapah Highway where it branches from the old Lone Mountain Road to the vicinity of the claims; the Charleston 24/39 claim. The Charleston Spur claim is passed very closely by the old Lone Mountain Road which goes up the draw; a portion of the claim is passed by this. Otherwise, I saw nothing on the Charleston Spur claim. In addition, I found two relatively recent bulldozer cuts on the Charleston 24/39. One is on the very east end of the claim and the other one is a quarter-mile west of it. There was no apparent removal from these cuts. I also saw older -- what appeared to be older bulldozer cuts in the 13A and 11 portions, as shown on exhibit G-2. Again, there did not seem to have been any removal, although a lot of this is in the draw and it would be hard to determine. By referring, however, to the aerial photograph dated April 15, 1965, none of the work to which I have referred shows on

the ground within the limits of the claim or outside the limits of the claim on the south, the road. The bulldozer cut is not here on the east end of the claim, neither is the bulldozer cut a quarter-mile to the east, indicating that up to 1965 nothing was done on the bulk of Charleston 24/39 claim. Now, there may have been some work done in the very west end of it, but I have no personal knowledge of who did the work or exactly how much of it may have been done.

Q Were there sufficient openings, either man-made or natural, to enable you to determine the extent of the sand and gravel deposits on either of the contested claims?

A The openings were so limited that they could only be referred to the areas in which they existed and then, by conjecture, or by extension, by looking at the surface and comparing it with what was seen in the

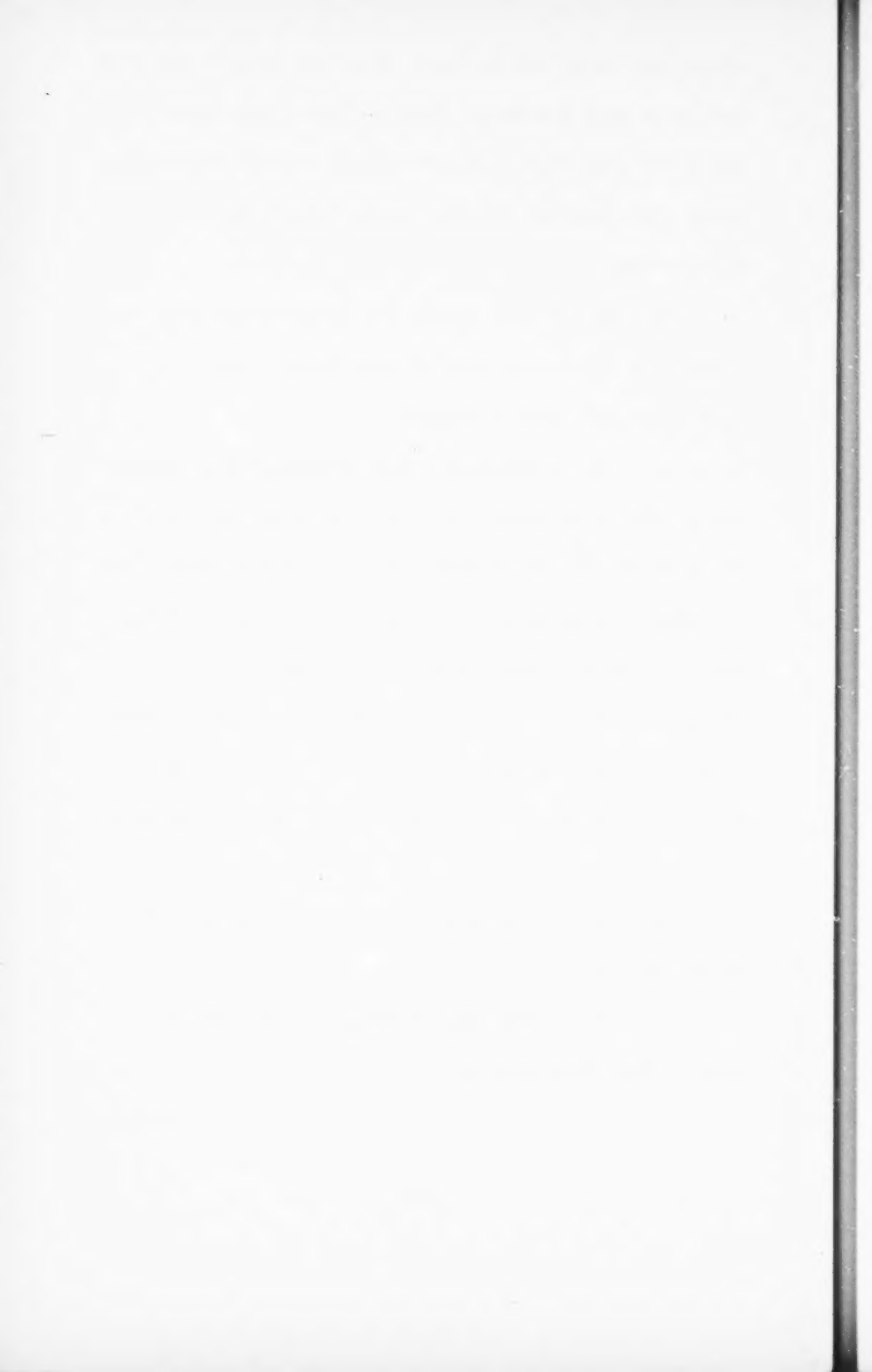
opening, one could say that at least on the surface and perhaps for a few feet down, most of the Charleston 24/39 claim contains sand and gravel of various types and qualities.

Q Were you able to determine how far down the deposit would go, from the openings on the claims?

A As I recall, the deepest bulldozer cut, the one that is about a quarter-inch -- a quarter-mile west of the east end line of the claim was very nearly 15 feet deep when it was first dug. That was the deepest hole, aside from some of the draws traversing the area and some of them will get 10, 15 even 20 feet deep, and they are in sand and gravel.

Q All the way to the bottom of the excavation?

A All the way down, as far as I saw. On Charleston --.



Q Before you go on, were you able to discover from that how far down the sand and gravel deposit goes?

A No, not completely. You could only determine -- you could only be sure to the depth you could see.

Q But you had no reason to suspect it may extend farther down?

A It could extend quite deep.

Q How about your other -- the claim to the west?

A That would not be true of Charleston Spur. I have no idea of the actual depth of the sand and gravel in the three acre portion in the lower portion of the claim. Since this is a dry wash, the limit of this might be less and more confined than the sand and gravel out here on the Charleston spur where the topography, the preexisting topography before these eroded materials were laid down, spreads out. In other words, you



could have a little more deep deposit here. On the upper portion of the Charleston Spur no. 1, there is essentially no sand and gravel.

Q One of the charges filed against the contested claim is that valuable minerals have not been found within the limits of each claim which would constitute a valid discovery within the meaning of the mining laws. Do you concur in that charge as filed in the Complaint?

A I do.

Q State specifically, and in detail, why you so concur.

A A discovery of valuable mineral, by referring back to the prudent man clause, requires that you must have sufficient material as would warrant a prudent man, in the expenditure of his labor and means with a reasonable prospect of success in developing a paying mine. That discovery carries with it



marketability, especially on sand and gravel, since the passage of Public Law 167 on July 23, 1955. Now, marketability, actual marketing, tends to show that there is a market for the material. The market must be available. It does not appear there has been any marketing of this claim, or these claims at any time. If there has, it could not have been in large quantities.

Q What would be the market for the material for the contested claims?

The principal market would be in the Las Vegas Valley and probably, again, as fill material or perhaps as construction materials.

Q What would be the haulage distance?

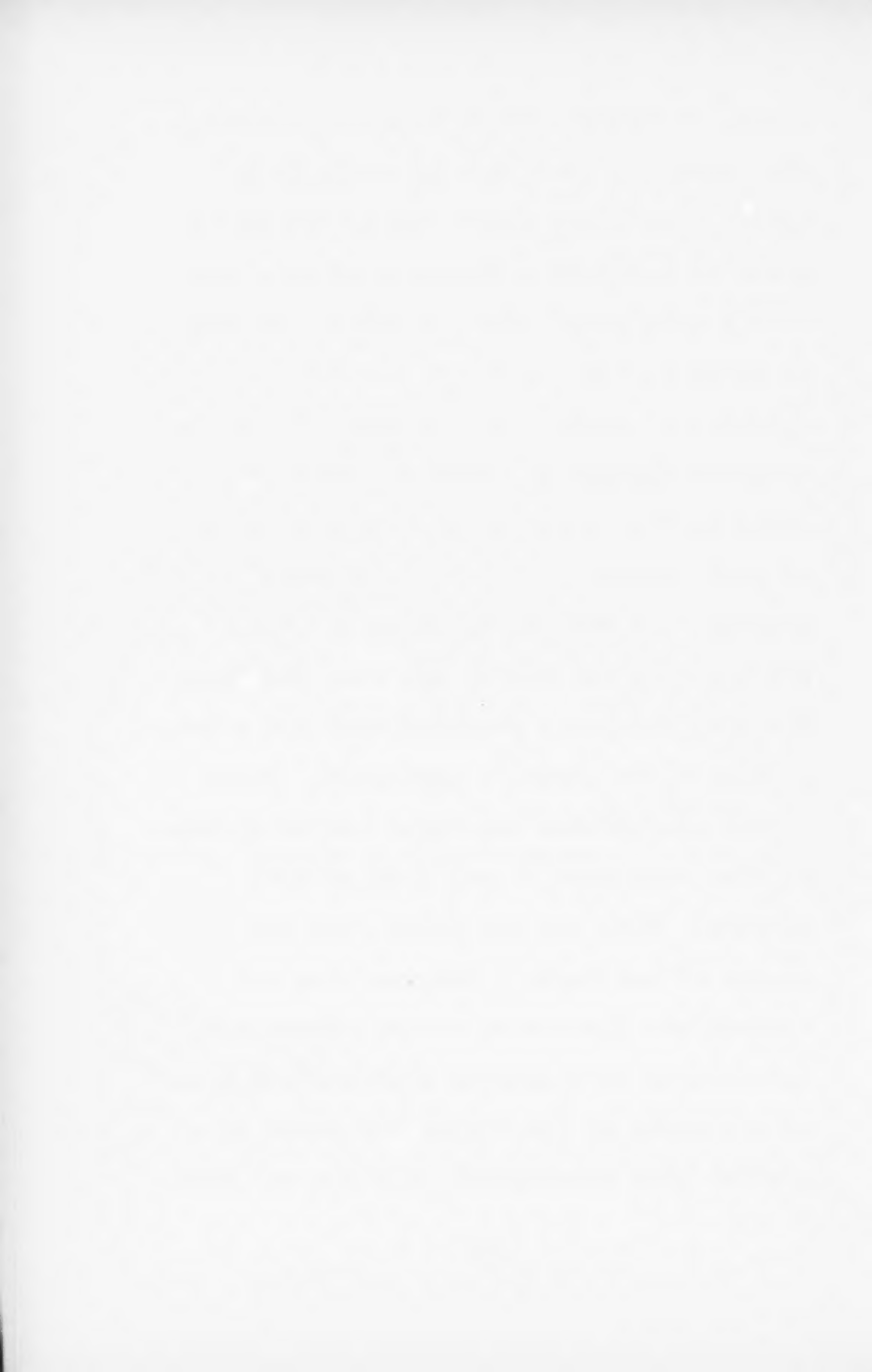
A The haulage distance to the center of town would be about twelve miles.

Q But you're not going to haul that material to the center of town. The center of town has been built up, has it not?

A It has, and if you compared it with -- then you compare the haulage distance from these claims with haulage distance from other operations in the Las Vegas Valley. On exhibit G-1, we have Nevada Ready Mix plant which is on the east side of the Valley. It is shown by a diamond and "Nevada Ready Mix." That, from Las Vegas -- again, from the center of Las Vegas, is a matter of about seven and a half miles. But the town has been built up considerably to about this area so that some of the market at least would be no more than a couple of miles. This is one of the two major producers in the Las Vegas Valley, by the way. The other major producer -- largest producer of the two -- I said that misleadingly. On this side, it is probably the largest producer; it is one of the two largest producers. The other is Wells Cargo on the east -- on the west side of the Valley. Now, Wells Cargo, radially



again, is thereby about seven miles from the center of town, but it is built up again, so that at least some of the market could be at least a couple of miles, less than a mile away. The --- WMK and Stocks as shown on the southwest, in the southwest quadrant of exhibit G-1, produce primarily concrete aggregate. They are about seven and a half or eight miles from the center of town, radially. In the southwest quadrant are WMK and Mendenhall. They produce sand and gravel and also Las Vegas Building Materials produces sand and gravel primarily for concrete aggregate. These claims are between Las Vegas and Henderson, so that they make -- may draw on both markets. They are ten miles from the center of Las Vegas. Now, working out towards the Charleston claims, there are subdivision developments within about five or six miles of the claims and there is a trailer park development, and I'm not sure



whether it's the homes in here or not. If they are, they're closer to the highway than is the trailer park; a few homes out here. So they're within, then, 1, 2, 3, 4, about 5 miles from the claims. So that by a factor of at least five miles, they would have -- from the Charleston claim, there is, you might say, a dead haul distance of five miles over what almost anybody else would have to haul, so that in terms of competition, they would have to overcome the extra haulage distance, either by efficiency of operation or by better management or by bigger sales in a proper quadrant of town.

Q Do you have any opinion as to the haulage factor with respect to the contested claims prior to July 23, 1955?

A The town was smaller then and by that very face, the competitive problem of haulage distance was probably more of one than it is today.



Q The other charge filed against the contested claim is that no discovery of a valuable mineral had been made within the limits of each claim, because the mineral materials at the present cannot be marketed at a profit now and could not be marketed at a profit prior to the Act of July 23, 1955. Do you concur in that charge?

A I do.

Q On what basis do you so concur?

A Since July 23, 1955, sand and gravel have been taken from the category of locatable minerals under the General Mining Laws, so that on July 23, 1955, the -- a discovery must have been demonstrated as of that time.

BY THE HEARING EXAMINER: We will be in recess till 20 to 11.

(Recess taken)

BY THE HEARING EXAMINER: The hearing will resume.

BY MR. AHO: Do you recall what you were saying before the recess?

BY THE WITNESS: I believe I do. The problem of -- I think you'd better rephrase the question.

BY MR. AHO: I won't rephrase it. I'll repeat it.

BY THE HEARING EXAMINER: Was it the second charge?

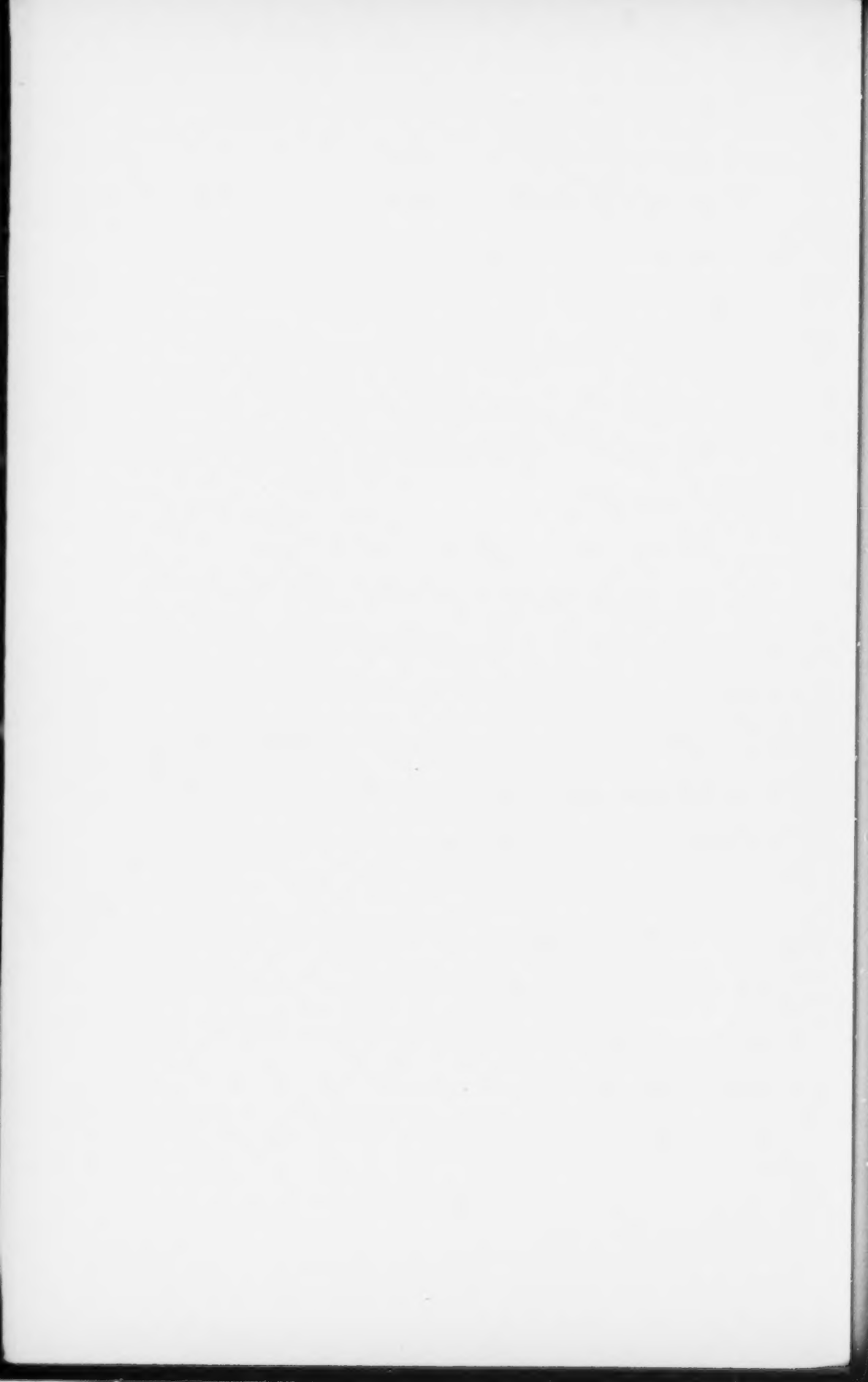
BY MR. AHO: Yes.

BY THE HEARING EXAMINER: Why don't you just look at the second charge, Mr. Schessler, and testify with respect to it.

(The witness examined the Complaint.)

BY MR. AHO: I asked if you concurred in the second charge, and upon what basis did you so concur.

BY THE WITNESS: I indicated that I did concur and the reasons are: decisions have indicated and what I understand of the law, there must be a present market and market at the time of discovery to



establish a discovery on a mining claim and more or less continuing market for the material. This relates back to Public Law 167 again of July 23, 1955, and as of that time, the claim could not be validated since, by discovery. Discovery is tied to the present market and to a more or less continuing market, based on this July 23, 1955 date. By referring to exhibit G-3, which is a 1965 picture, it indicates, and I saw nothing to argue with this, that there had been no material produced or removed from either the Charleston 24/39 or the Charlston Spur no. 1 all the way up to April 15, 1965. My ground examination on January 22 and February 11, 1971 indicated that as of that date there had still been no material extracted, removed or marketed and this, in substance, is why I must agree with the charge as made.

Q Based upon the study that you made prior to your actual examination of mining

claims in the Las Vegas Valley with reference to the market as of July 23, 1955, do you have any opinion as to whether or not the material on either of the contested claims could have been marketed at a profit prior to July 23, 1955?

A Well, I don't think it could have been; the basic reason, of course, being that it was not, and there were operations very near by, at times during a period all the way from the 1940's, the World War II years right up until the beginning of the 1960's. But those operations took place mostly in the draw, north of the claims -- north of the Charleston 24/39 claim and even those operations were sporadic and finally ceased. I would presume that haul distance had a lot to do with it in competition with other producers nearer to the city, nearer to the market. But again I go back to the contention that at the time there were operations and materials



easier to produce. One of the reasons being that there was a road to them very near by. The properties with which we are here concerned were not operated and there was thus no market demonstrated for the claims.

BY MR. AHO: I have nothing further of the witness.

BY MR. McNUTT: We have decided that I will do the cross examination and Mr. Sullivan would make a statement, presenting our case.

BY THE HEARING EXAMINER: You may proceed.

CROSS-EXAMINATION BY MR. McNUTT:

Q In essence, what you have said, that there is very good gravel in Charleston 24/39?

A Yes.

Q You didn't determine the depth, but it could possibly be as much as 5 or 600 feet in depth?



A Yes, it could.

Q You also concluded that there was no market in 1955 for the gravel from this claim, in your opinion?

A With the question phrased that way, my reply is yes.

Q But you say this because -- let me rephrase that. You have been in the Las Vegas area since 1966, I believe that is correct. Prior to that, you had never been in Las Vegas?

A Only passing through, a couple of times, back about 1954, 1955, 1956, somewhere along in there.

Q In the course of your endeavors as a mining engineer for the Bureau of Land Management, do you review the market sales of sand and gravel deposits in the greater Las Vegas area?

A I do.

Q And you find that they have been fairly consistent throughout the years, gradually increasing in volume?



A There has been a gradual increase in volume, but I wouldn't say consistent, no. There have been ups and downs. Some fairly radical ones. I wouldn't try to pin them down as to dates. However, I will say that today's production, that is, for 1970, it was reaching toward twice as much as in 1968 in the Valley.

Q So that, as of today, there certainly is a good market for gravel in the Valley?

A There is a total market in excess of 3,000,000 tons per year. Considerably in excess.

Q According to exhibit G-1, the map that shows radial proximity, there is a dashed line around the Las Vegas area. What does that dashed line indicate?

A It is more or less the city boundaries. In all truth, I haven't checked the exact boundary against the city map, but this is more or less a city



boundary -- the city limits. This map was made some time ago, in about 1965 or 1966, I believe so that the basic information on it, the lines, the Sections, the circles are what the maker of the map put on it at that time.

Q From your personal knowledge, you would say that possibly the dashed line encloses the urbanized area of Las Vegas?

A Yes, pretty much.

Q Taking specifically an example, Sky Haven Airport now known as North Las Vegas Air Terminal, if there was a construction project out there, the proximity to the Charleston 24/39 would be how many miles as compared to Wells Cargo's operations.

A Well, Charleston 24/39 we can count by using, say, the center of the claim or even the east end of it. That would be a bit more favorable. 1, 2, 3, 4, 5, about 5-1/4, plus 1, 2, 3, not quite 3



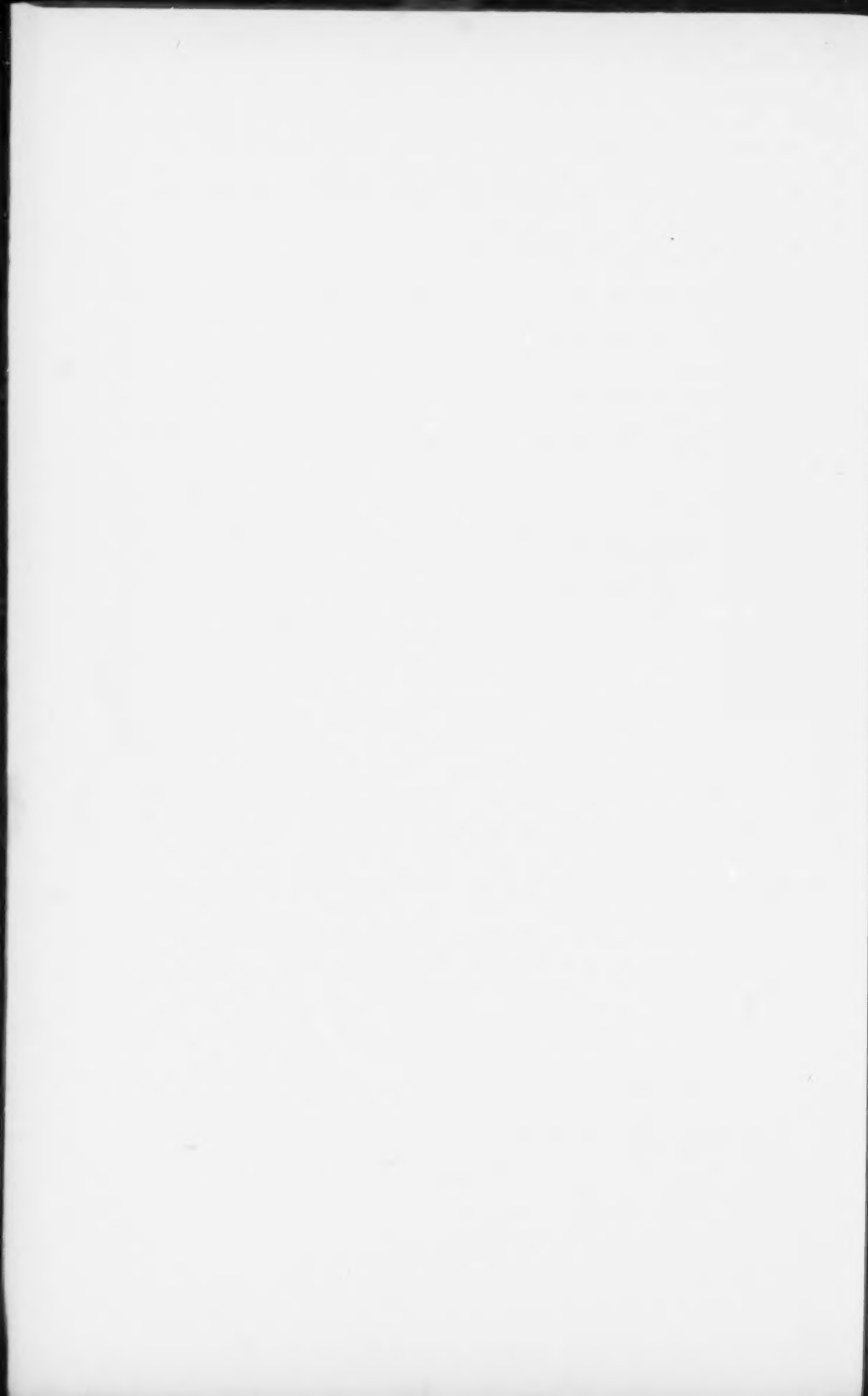
miles. So somewhere in the neighborhood of 8 miles -- 7 to 8 miles from the Charleston area and Wells Cargo would have to --. They probably would have to come up to Sahara, which would be a couple of miles, and then they would very likely have to swing east another couple of miles to Decatur, so there's four miles. And they would then go north approximately four miles, so that the distance from Wells Cargo or Charleston would be more or less equal.

Q Around what area?

A Sky Haven.

Q How many traffic signals would Wells Cargo have to go through, as compared to Charleston -- coming from Charleston 24/39?

A I can't answer how many, but any would be more, because there are none from the Charleston area.



Q You mentioned going north to Sahara, east to Decatur?

A Probably.

Q If I told you there was a signal at Sahara and Decatur?

A There is.

Q At Oakey and Decatur?

A Yes.

Q At Charleston and Decatur?

A Right.

Q At Alta and Decatur?

A Correct.

Q At Fremont and Decatur?

A Correct.

Q At Vegas -- Washing and Decatur?

A Correct.

Q At Vegas Drive and Decatur:
That's seven traffic signals.

A Correct. However, they would avoid those.

Q How?

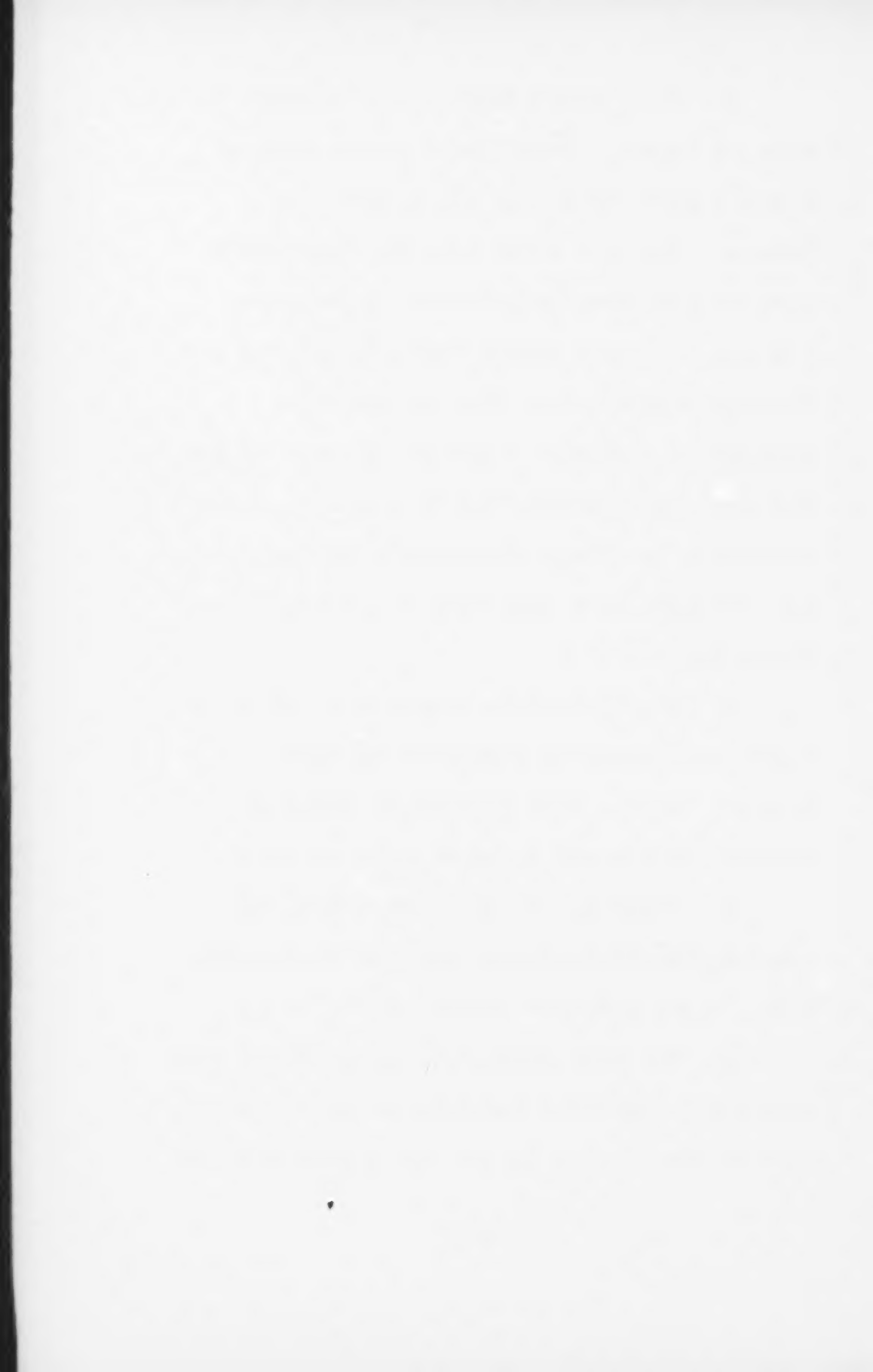


A They would have to go through an area of homes. They could avoid some of these lights by going out Jones from Sahara. No, not from Sahara, they would have to get from Charleston, I believe. I'm not too sure which roads have been put through where here. But in essence, because of traffic, they would have to go through the traffic lights because of the community problems that would be involved, so although it's the same distance, it would be --.

Q Eight traffic signals -- or seven traffic signals as compared to none. Right? Which, with attendant traffic delays, you would concede that as well?

A That is correct, and that, of course, would increase the ton mile cost. There's no question about it.

Q So that specifically on North Las Vegas Air Terminal reflecting Wells Cargo versus Charleston 24/39, the marketability



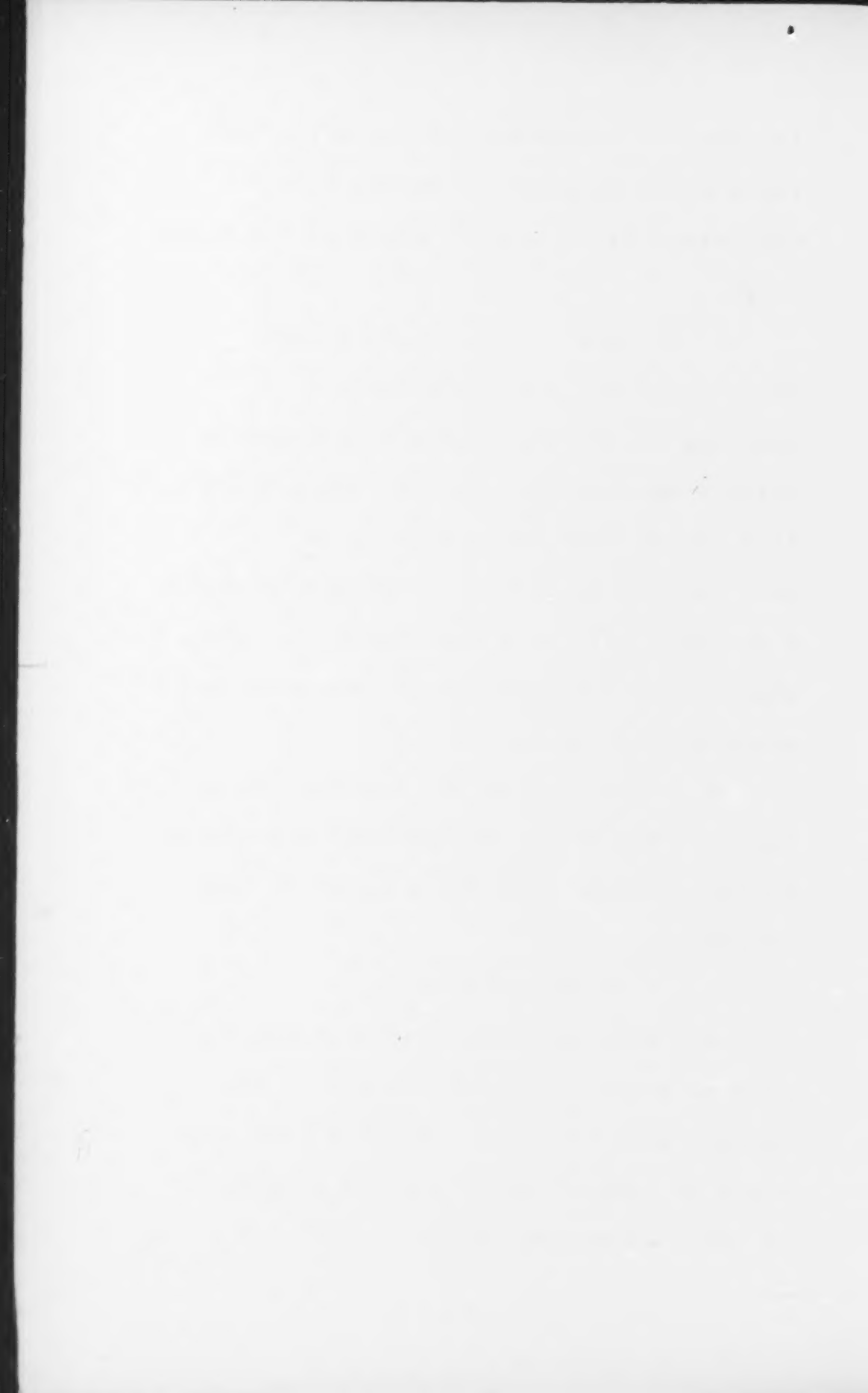
incident -- incidence, if you will, the index would be greater, better for Charleston 24/39 than it would be for Wells Cargo.

A I have to qualify my answer. Wells Cargo has a going operation. Anything on the Charleston would have to begin from scratch. So that there would be that factor that would have to be considered. As far as marketability index, I wouldn't call it a marketability index, I would call it a transportation factor as it would affect the market.

Q Then, let us say transportation factor. You would concede that Charleston 24/39 is better than Wells Cargo in that respect?

A I think I'd have to.

Q Now, you mentioned that you could find no signs of removal in any of the eastern area of 24/39. You did find some signs of removal in 11 and 13A components of that, referring to exhibit G-2.



A I don't believe I testified to any signs of removal, as such. I testified to signs of some activity. In other words, bulldozer cuts on the west end of 13A and 11. As to removal, I would hesitate to say, and yet there was some. The evidence is slim that it was in any large quantity, but I am dealing now with the claim itself. There are signs of removal, and in relatively large quantity, very near by. In fact, practically bordering on the Charleston 24/39.

Q Let us talk about the boundaries of the claim. Was that actually surveyed?

A The land has been surveyed, and I did see Section corners, quarter corners and Sections corners out there on which to base my location on the ground. In fact, one of the corners is shown on the aerial photograph, and this is this point right here, this south 16 quarter of Section 36. That is visible as a little, white el



shaped patch immediately on the edge of the red line here and that consists of either a lime patch -- it looked like a white lime patch placed on the ground prior to the time the photograph was taken. So that coded corner is positively located on the photograph. It shows. That is the east end line of 24/39.

BY THE HEARING EXAMINER: It is a vertical line on the east end of the exhibit.

BY THE WITNESS: That is correct. Near the center of that line is that little while el shaped nick, if you will.

Q (By Mr. McNutt) You would surmise, of course, that it was placed there by field crews, ground crews to aid and assist in the aerial photography.

A I would assume so, yes, because it shows up quite well on the picture. There are, of course, a lot of little white patches on the photo which do not represent



these things but I happened to visit this one on the ground and there it was.

Q Referring to exhibit G-3, you mentioned that as of 1965, the date of exhibit G-3, you could see no evidence of any removal of gravel, any work at all being done in 24/39.

A Not any work at all, but as to removal, in the interpretation of the photo itself, I would have to state that there is nothing showing on the photo indicating removal. Nothing that you can see of what, is, or may have been.

Q Do you see anything in there that indicates work being done in 24/39 by bulldozers, excavators, or anything such as this?

BY THE WITNESS: In 1965, the date of the photo, or previous to that?

BY MR. McNUTT: It would have to be previous to the photo because it's only going to show on it.



A What looks like what may have been a scraping in the very west end of the claim and there are little piles of material that are not too visible, but they can be seen here in the northwest portion of it. But in terms of excavation, its depth, what have you, you can't find anything on the picture. There is no indication of any substantial removal.

Q What you are saying is, that the photograph is a flat photograph and does not give you the relief you would need to determine depths for excavation.

A It does not give me the relief and it does not give me the contrast on which to see it. Also, I might point out that this is a mosaic, and although it is frequently difficult to determine the mosaic pattern where they have to lay photos against one another -- this is a number of photographs placed together and rephotographed. Now, this is an obvious

mosaic joint, here. There is what possibly appears to be here -- these people have been very good at their work. They have used differences in shading on the photo to help make their mosaic. There may -- I'm not sure of this -- but it looks like here there is even a joint. It's a little difficult here to say just what is what.

Q Do they not normally make these joints at roads or streets in the process of making a photo mosaic?

A No, they don't, not here. Especially when you're dealing with large areas of country such as this one. Look at this one, that is an obvious joint, but it becomes less obvious down here.

Q But this joint also follows a road further along?

A I think that's more or less true. I'm not aware that they do this all the time.



BY THE HEARING EXAMINER: The work that the witness has been discussing is in the lower right hand corner of exhibit G-3, the joint.

BY THE WITNESS: That is correct.

BY THE HEARING EXAMINER: You may proceed.

Q (By Mr. McNutt) To come back to what is known as 11, part of 24/39, where you were mentioning the excavation that you saw and can recognize, this is immediately adjacent to a road, is it not?

A It is.

Q It would have immediately available transportation without any other problems?

A That is correct.

Q Continuing on along to 13A which is again a part of 24/39, identified somewhat separately, the road passes through that area as well, does it not?

A It does.

Q Is there any evidence of excavation in that area?

A I have another note on the map here on which I have located some of these.

Q I am referring now specifically to the photograph. From your own personal viewing of the photograph which is what you based your previous testimony on.

A Photograph, no.

Q There is no evidence of excavation?

A No.

Q I call your attention to this little white spot, right here. For the records, this is approximately in the center of the eastern portion of 13A, a white spot. What would you call that?

A I don't know what it is.

Q It could be an excavation?

A I am not at all certain what that is. I would question it being an excavation, but it could be. If you will



notice to the south, here, there are other white patches indicating possibly, either defects in the pictures that were used to make the mosaic, or what have you. I cannot say from this if that is an excavation.

Q Immediately to the west, to the left of that white spot we were talking about, is a slight bend in the road and there was a difference in gradation and texture there. Does that indicate specific excavation?

A It does, for the road, at least. Because the road here comes down off the hill, if I remember right. No, it does not. It is already in the draw, following along the side and continues here in this area. It is definitely a part of the road cut and a little bit wider.

Q So it could have been an excavation for gravel immediately adjacent to the road prior to 1965?

A It could have been.

Q In 1958 or 59 there was a large flood in this area. Would the flood have eliminated traces of excavation in that area? A rainfall that amounted to approximately six inches of rain in a matter of, I think it was eight hours.

BY THE WITNESS: I'm going to ask you to point out the area that you are talking about.

BY MR. McNUTT: I'm saying, generally in the mountainous area to the west of Las Vegas, there was a veritable cloudburst of rainfall, approximately six inches of rain falling within eight hours in the general area to the west. Is it possible that such a rain could obliterate excavations?

A Excavations in the draws, yes, but not necessarily up out of the draw.

Q The evidence seems to be then, that it's possible there was excavation and removal prior to 1965, the date of this



photograph from what you, with careful observation, have looked at?

A I would have to concede the possibility, yes, providing we are confined to the study of the aerial photograph. The aerial photograph, taken alone, that possibility does exist.

Q But you were not here prior to the photograph?

A I was not.

Q And you have no personal knowledge of this?

A That is correct.

Q And all your deductions have been based upon this aerial photograph?

A That is correct

BY MR. McNUTT: I have no more questions.

BY MR. AHO: I have just some redirect for clarification purposes.

REDIRECT EXAMINATION

BY MR. AHO:



Q We have been referring to plot 11 and plot 13A involved in the Charleston 24/39 claim.

A That is correct.

Q 13A and number 11 are Charleston placer claim 13A and Charleston placer claim 11, are they not?

A That is correct.

Q And the claim involved in this proceeding, 24/39, overlaps Charleston claim 11 and Charleston claim 13A. That is correct?

A That is correct.

Q And Charleston claim 11 and Charleston claim 13A are presently owned by Charleston Sand --.

A Charleston Stone Products.

Q And they have also been contested in another proceeding, have they not?

A They have.

Q And decision thereon is still pending, is it not?



A I haven't seen it yet, so I presume it is, yet.

Q But, insofar as your exhibit G-2 goes, you are just trying to show that the contested claim in this proceeding does overlap 13A and claim 11?

A That is correct.

BY MR. AHO: That's all. I have no further questions.

BY THE HEARING EXAMINER: You may be excused then, Mr. Schessler. Do you have further testimony?

BY MR. AHO: No. No further witnesses, either.

BY THE HEARING EXAMINER: The government has rested its case and at this time, Mr. Sullivan, you are entitled to present evidence on your behalf, as contestee.

FRANK R. SULLIVAN, having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, testifies as follows:



BY THE HEARING EXAMINER: We will be off the record.

(Off the record discussion held.)

BY THE HEARING EXAMINER: You may proceed, Mr. Sullivan.

STATEMENT BY MR. SULLIVAN

BY MR. SULLIVAN:

Well, I'd like to refer to this map that we have here.

BY MR. AHO: Which one?

BY MR. SULLIVAN: The one on the wall, exhibit G-3. And show you some things that are a matter of record here, and why it's been changed. Now, right in here we had a big excavation which carried over into my claim, and I didn't know exactly where this location or this mining claim was now, the corners, until I had it surveyed. That's why he was able to detect where these were marked off because I outlined it after I had it surveyed.



BY THE HEARING EXAMINER: Will you please put an "E" by the excavation that you just described.

BY MR. SULLIVAN: This one right here. The biggest one. An "E?"

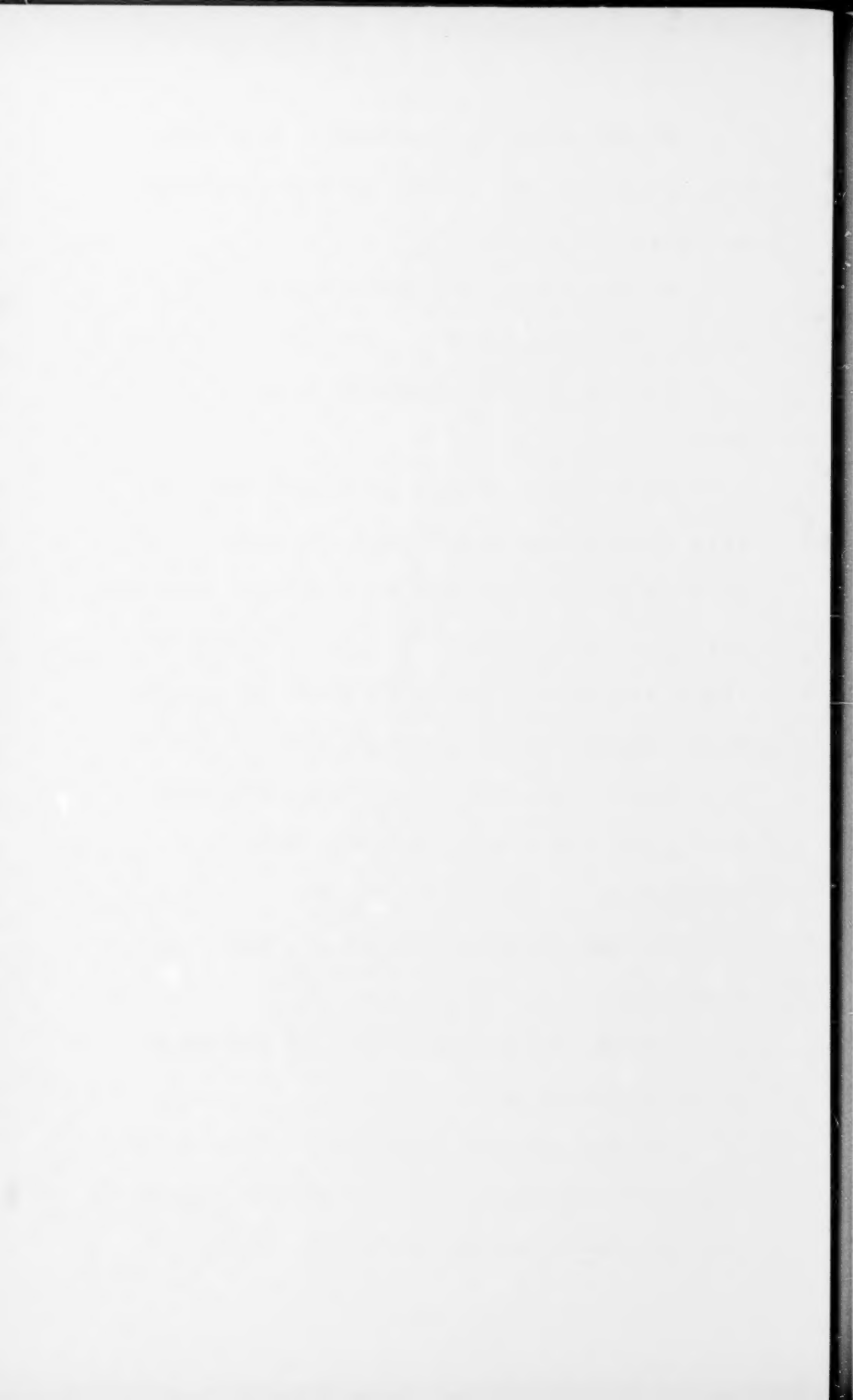
BY THE HEARING EXAMINER: A red "E," yes.

BY MR. SULLIVAN: At this time that this excavation took place, we thought we were on our claims and we did come into the corner. Now, this is the big excavation there and that's about 20 feet deep. It does come up onto my claim, it's quite a bit there. Right there, this wash down here, the big flood that Mr. McNutt mentioned.

BY THE HEARING EXAMINER: Now, that is a wash?

BY MR. SULLIVAN: This is the main wash, right here.

BY THE HEARING EXAMINER: That's to the left and along the top of the claims on the northwest corner of 24/39 claim.



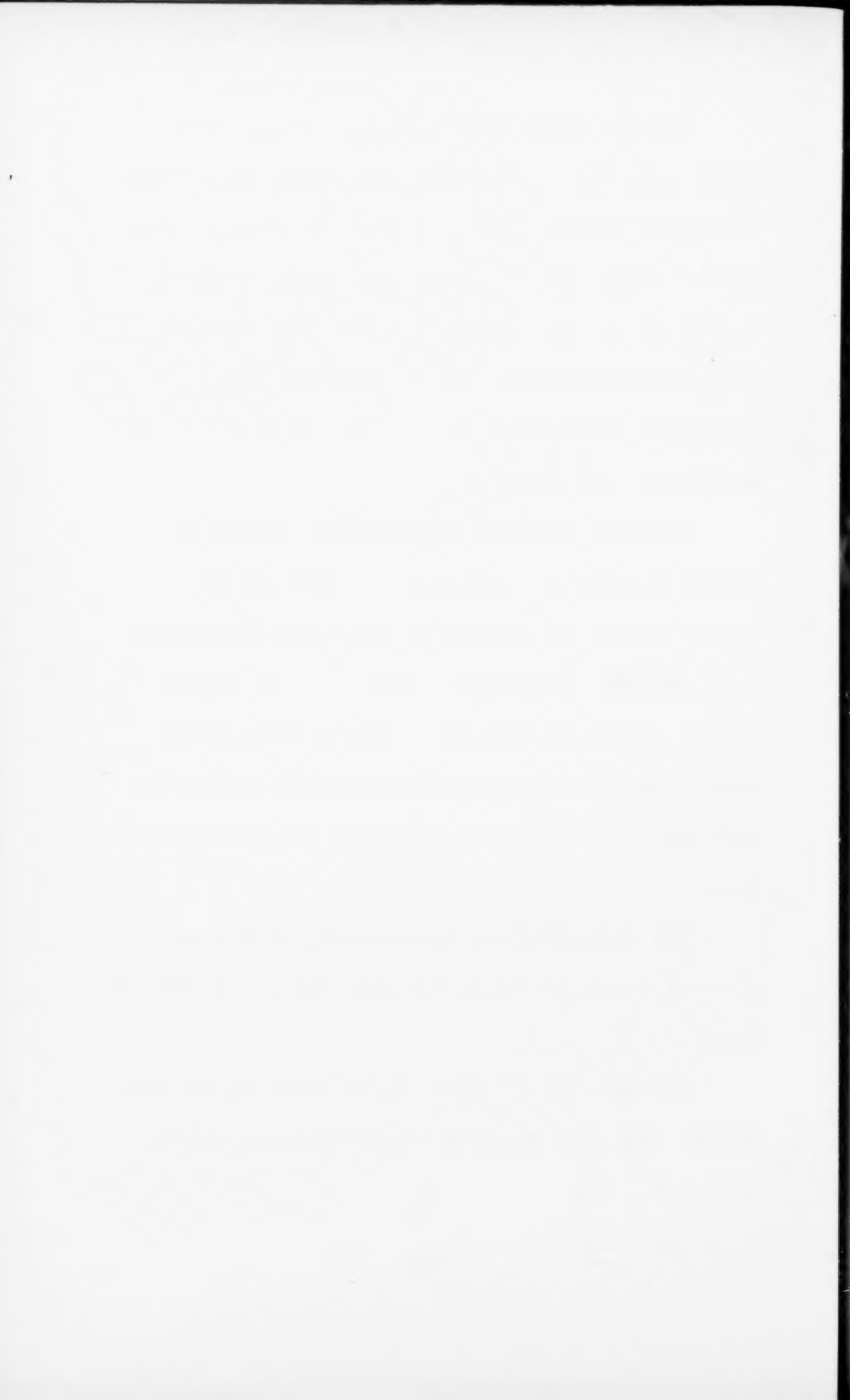
BY MR. SULLIVAN: Right here, they come together. This is the main wash right here and comes down. I had to change this road. I'm the one that put this road in and I have the record. I had to change this road because that flood washed out all evidence that we had in here of excavation and took the road out.

BY THE HEARING EXAMINER: Would you place a general indication in blue on exhibit G-3 of the wash that you have --.

BY MR. SULLIVAN: Well, it's right here. This is the main wash, down here. And I had to change this road in order to get up over the hill because it was washed out.

BY THE HEARING EXAMINER: Place a little line in red, if you can, instead of blue.

BY MR. SULLIVAN: This used to be the road. Do you want me to show the road?



BY THE HEARING EXAMINER: Yes, just generally.

BY MR. SULLIVAN: The road used to come right here.

BY THE HEARING EXAMINER: That is a red line again in the northwest corner of the 24 claim, generally.

BY MR. SULLIVAN: There is evidence, there used to be a building sitting right here. A shed.

BY THE HEARING EXAMINER: Place a "B" at the point you have just described.

BY MR. SULLIVAN: I don't think there is any evidence there.

BY THE HEARING EXAMINER: No, just indicate the location of that point "B."

BY MR. SULLIVAN: So we had to change our operation and moved in this area which you can see right in here.

BY THE HEARING EXAMINER: Place an "A" where you indicate an area.



BY MR. SULLIVAN: We moved our stockpiling area.

BY MR. AHO: I think when you say "we did this" and "we did that," you'd better try to give the year and month that it was done.

BY MR. SULLIVAN: This was in --. What year did you say the flood was?

BY MR. McNUTT: 1958.

BY MR. SULLIVAN: In 1958 this took place. We had a crusher up there. A big crusher sitting in the wash here.

BY MR. AHO: When?

BY MR. SULLIVAN: I was in 19-- , about 1958. We had to move it out on account of vandalism. We had a big generator; we had an \$8,000 generator we had, to make our power. It was stolen. So what we did, we moved this operation out of here and we come in and dug excavations, hauled it out with a truck, but we didn't process it here any more. Because of the vandalism and



that, we moved our operation down to a place in North Las Vegas and hauled into there, screened it, and stockpiled it there, and hauled it out to Nellis, the City of North Las Vegas and this is where we made our --.

BY MR. AHO: When?

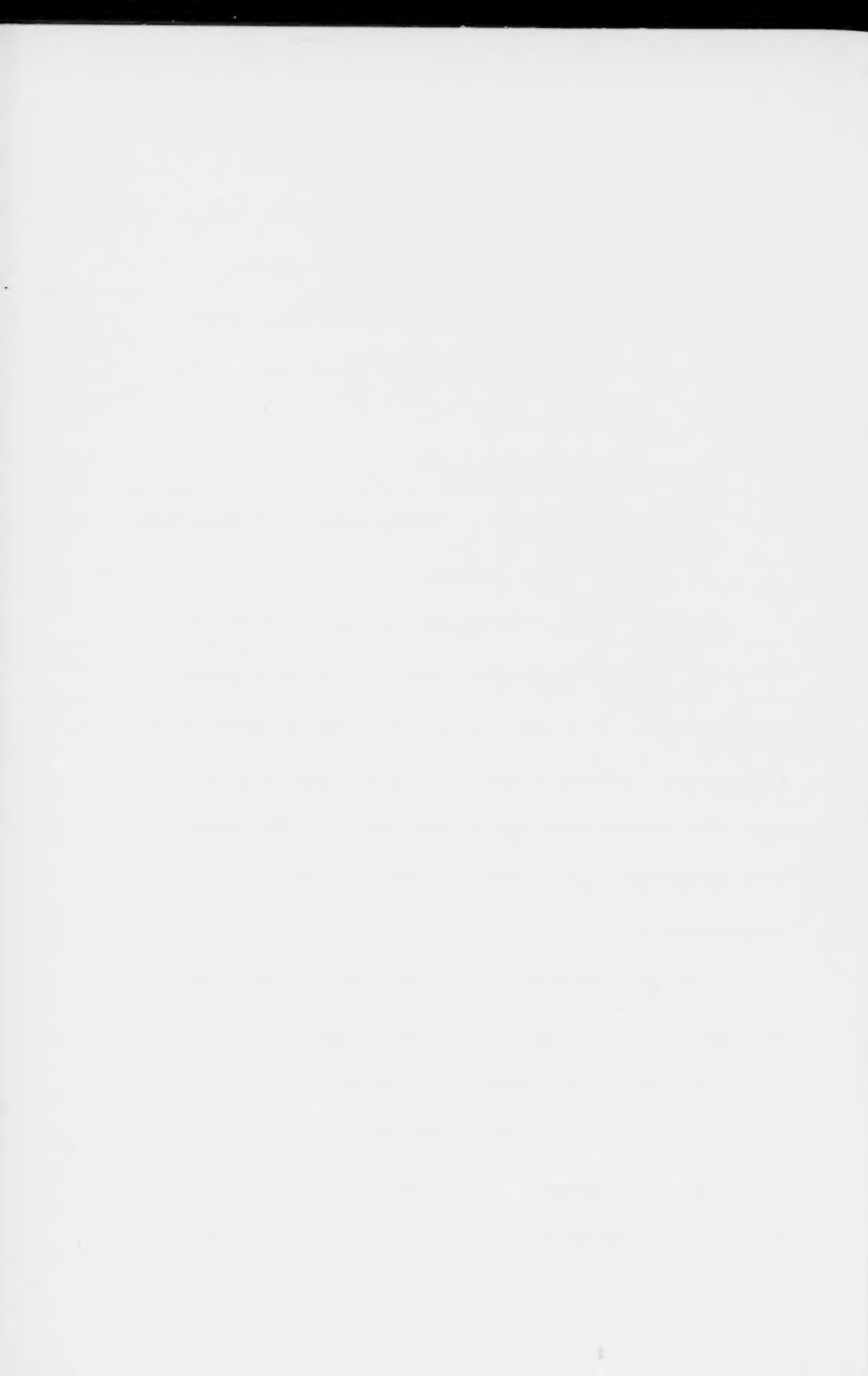
BY MR. SULLIVAN: This was -- this has been going on ever since --.

BY MR. AHO: I mean, after 1958?

BY MR. SULLIVAN: No, this has been going on -- I have been selling gravel from this ever since I got -- but the operation has not been taking place here. We moved the crusher out. We moved it out completely.

BY MR. McNUTT: Frank, what we are trying to find out is the dates.

BY MR. SULLIVAN: I moved the crusher out in 1957. Do you know when the County put in the sewage disposal plant? This is when I moved the crusher out. Right after



that, the vandalism was so bad, they cut two belts off, and I had to move it out. And this is when I got a screening plant, sold the crusher, and moved it down home where I could work, and I sold the gravel off these claims right in this area right here, right in the wash, right here and right in this area right here in the wash, I sold gravel out of there and I also -- let's see -- right in the area right here, I sold an awful lot of gravel out of this area. Now, most of my operation was in this area, in this wash right here.

BY MR. McNUTT: For the record, that is 11 and 13A area of 24/39 claim.

BY MR. SULLIVAN: This is where I would take most of my material, because at that time I didn't have a cat that would dig that hard of a material, so I got it out of the wash. And there is some evidence there yet, a little.

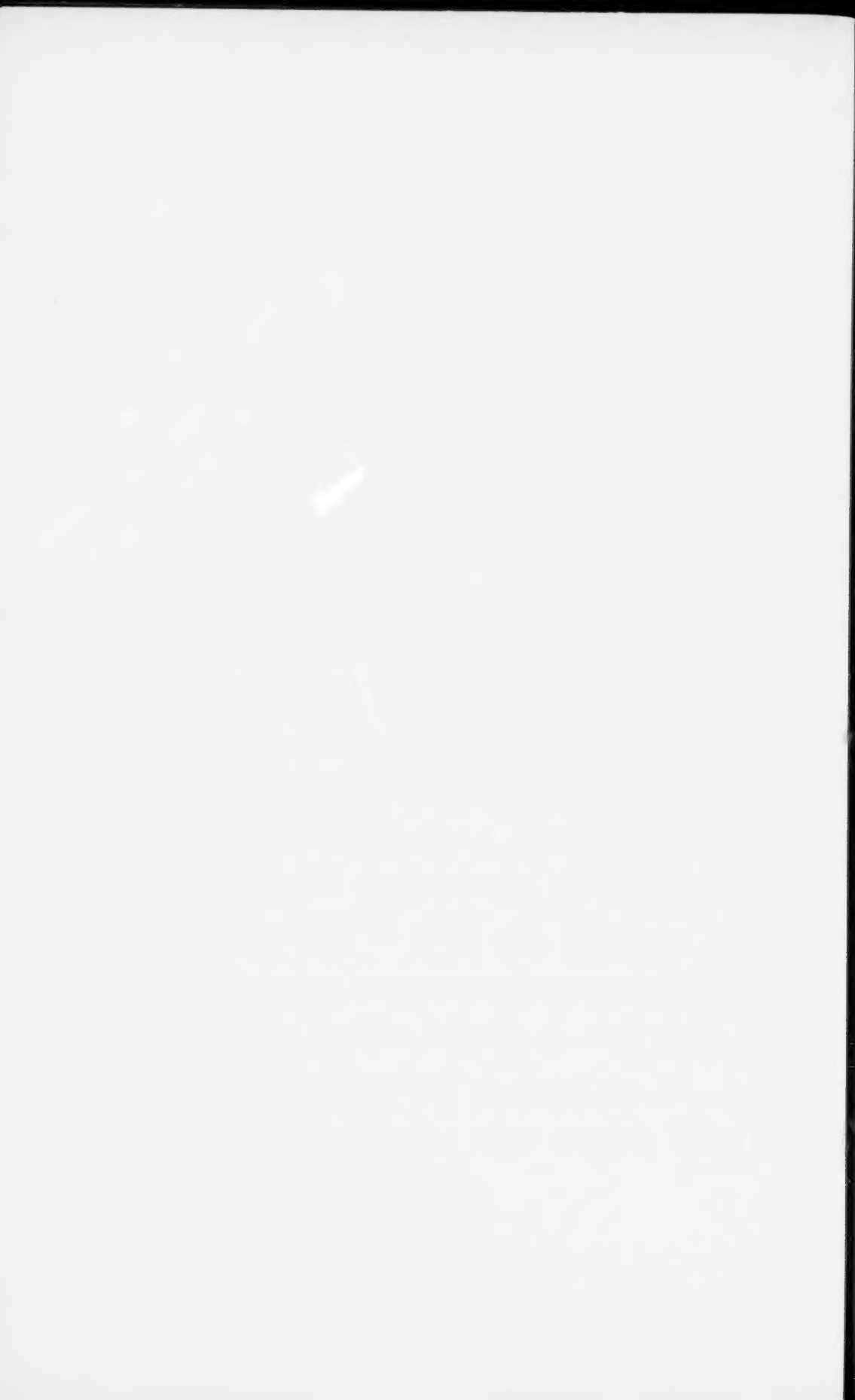


BY THE HEARING EXAMINER: Did you have any further statement to make?

BY MR. SULLIVAN: Well, since this aerial photo has been put in, I have outlined these claims and have put exploration places on them in the places that I could get to with the roads that I put in, which would show, visible up there, should be, unless the floods and the rains have destroyed it. The things that I put on the ridges is still there. You can still see them, but I didn't haul off the ridges. I did some exploration -- dirt exploration there to show evidence of --.

BY MR. McNUTT: What constitutes doing work on claims that are not being produced when you used this area to produce gravel out of and you are figuring on moving down here is your equipment to move with ---.

BY THE HEARING EXAMINER: "Down here" is the eastern area of 24/39.



BY MR. SULLIVAN: This is the best gravel. We tested this here. At one time, I owned all this area. Not just this right here, but the people that you are contesting on the other claims, I owned the whole thing and bought it all from Mr. Browner. I took it on a foreclosure, is what it was. I lent him money to get in on his operation here for sale of gravel to Nellis, to the City, Mercury, it was hauled all over the country from these claims right here at one time. And when he got sick, broke his leg and he was working, I lent him the money to operate with, and he later deeded it to me for this obligation. And the gravel sales off this property has gone on day and day -- I mean if a guy come to me for a specific type of gravel, with this gravel that I was producing, I mean you can't get it any place else in this Valley. There is no place that will match this gravel



production for quality, because it doesn't have to be washed. All that has to be done is screened. It doesn't have to be crushed. All that has to be done is just hauled out in a truck and it will meet the specification the FHA has for requirements for rock material. Just a few years ago, I hauled 3,000 yards to Nellis, just one contract. It was all processed in my place. We couldn't process it up there because I lost so much money that I had to move it out. I can prove that this operation went on there because I have pictures and I have receipts showing where I sold gravel.

BY THE HEARING EXAMINER: Now the area that you have indicated, is that in the best gravel, or the eastern end of the claims? Would you please place an "X" at that area.

BY MR. SULLIVAN: Well, I can't tell from this map, but I believe right in here



is a tank, isn't there. Right there. I built this road across. That kind of sets right there. Is this the way it is?

BY MR. McNUTT: It's here.

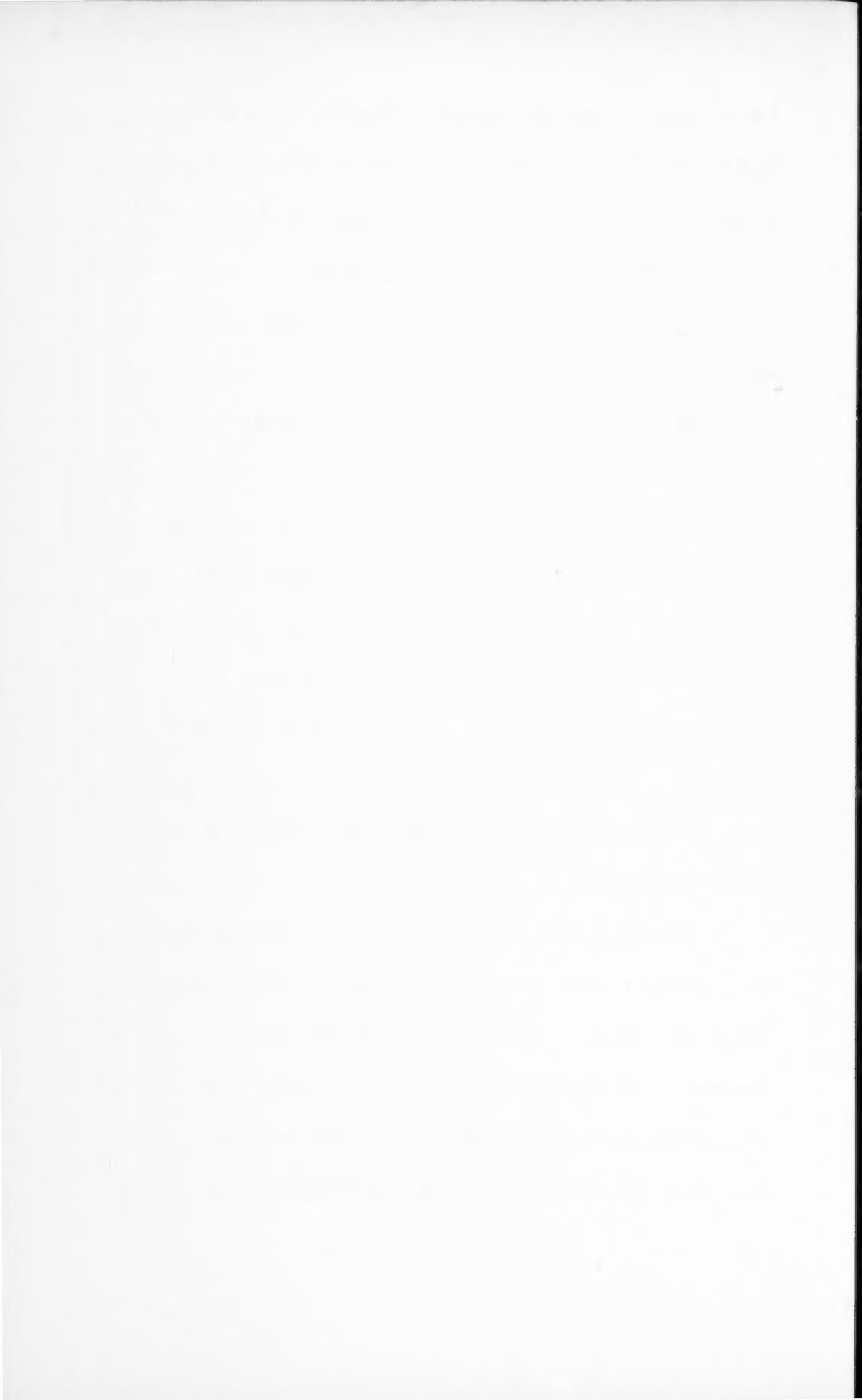
BY MR. SULLIVAN: This is an exploration hole here.

BY THE HEARING EXAMINER: That's off the claim?

BY MR. SULLIVAN: Well, it's in the claim's general area, on the same fill. We dug a test hole there, 680' deep, and we're still in gravel. We dug a hole in this claim right here, I believe it's 3,000' deep.

BY THE HEARING EXAMINER: That's the Spur claim.

BY MR. SULLIVAN: 2,700' deep and we hit gravel 80' deep on this -- right on the edge of this. This here shows the border. I don't know whether you saw it where we leveled that off right here. You can see it from driving up there.



BY MR. SCHESSLER: Am I at liberty to answer?

BY THE HEARING EXAMINER: Well, no, not at this point.

BY MR. SULLIVAN: Well, you can see it by driving up there. This road gets washed out all the time and it's all loose granule material. No good for road beds, and you can't use it. You get stuck there when you go up with a truck. So I got self loading scrapers and I come up there on this gravel claim up here and make new roads with my cat, come in here and picked this gravel up, haul it down this wash and put it on this road that goes up this creek here so that I could get up and haul it. I was working here for six months at one time. There is evidence, all kinds of evidence, there was, a few years ago, of exploraton diggings on this claim and I think if you go there visually, you can see some small mounds, but in the wash itself they would be all gone on account of the flood.

BY THE HEARING EXAMINER: Would you please take the witness chair, Mr. Sullivan. If you have now completed your statement, Mr. Aho is entitled to cross examine you.

CROSS EXAMINATION

BY MR. AHO:

Q When did you acquire the contested claims here?

A I had them in my possession for quite some time before I recorded.

Q But did you take them over after Frank Browner ceased operations?

A Not immediately, no, sir.

Q He went out of business about 1958, did he not?

A In that area, some time. I'd have to check my records and see.

Q To the best of your knowledge, Browner went out of business and you took the claims over?

A Yes, sir.

Q Did you take over all of the Charleston group of claims?

A Yes, sir.

Q That is Charleston group of claims shown on exhibit G-2 that are marked 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12A, 14, 15, 16, 17, 19, 20, 21, 22. Right? That's the Charleston group of claims.

A That's right.

Q And you went in, acquired those claims some time, say in 1958.

A It was immediately after that, that I recorded them, I'm sure.

Q And did you acquire title to all the Charleston group of claims.

A Yes, sir.

Q You sold them all to Charleston Stone Products except the claims you own now?

A Yes, sir.

Q And this big pit that you marked "E," the large excavation on Exhibit G-3, that is actually on claim 17, isn't it?

A Well, it comes over into --.

Q Just a little cornering on your 24/39 claims, doesn't it?

A You're talking about sales --.

BY MR. AHO: No, I'm talking about the big excavation. You marked this "E." A large excavation.

BY THE WITNESS: We thought we were on, but we missed just a little.

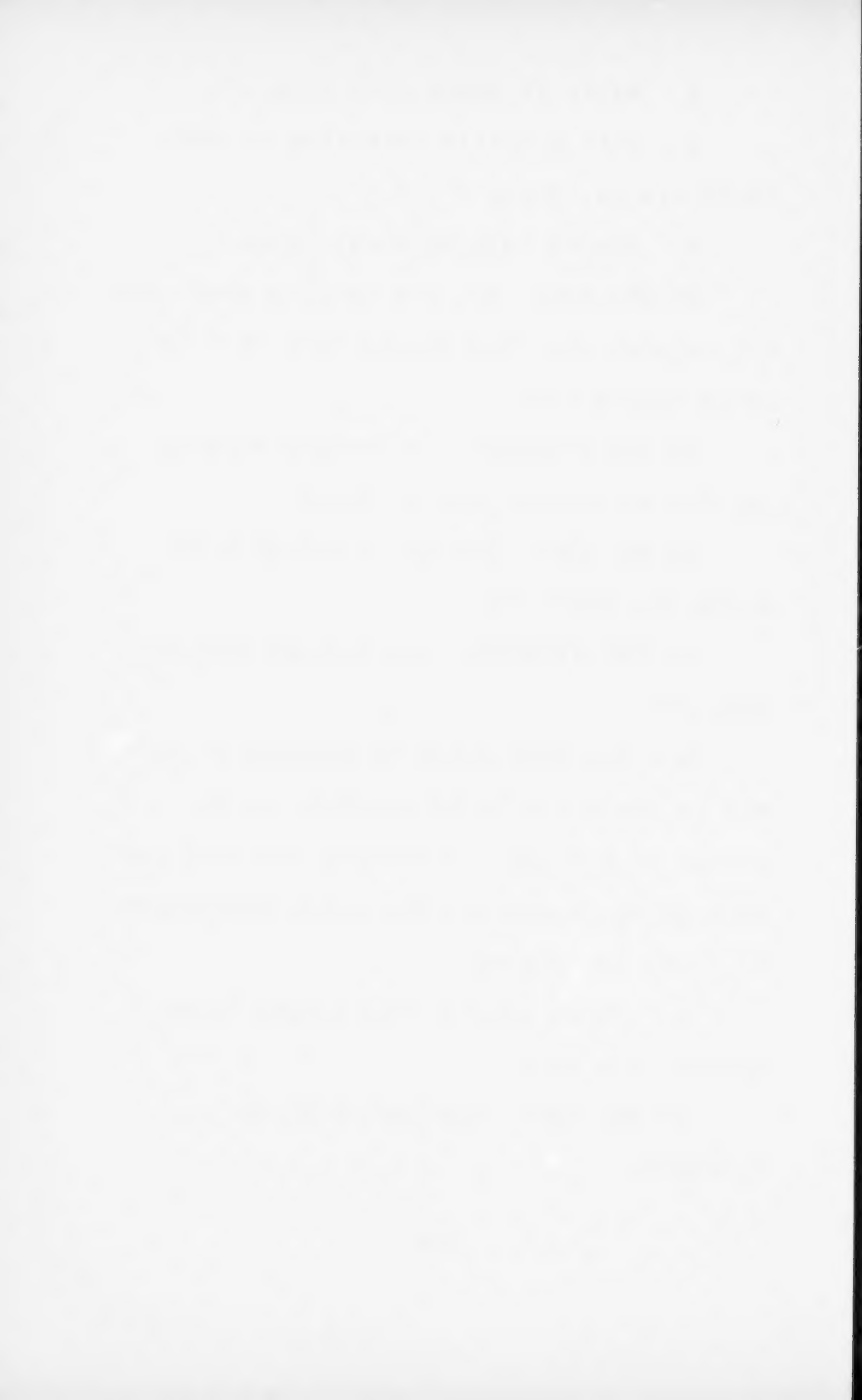
BY MR. AHO: but it is actually on claim 17, isn't it?

BY THE WITNESS: the biggest majority, yes, sir.

Q You were going to explain -- oh -- why is the claim 24/39 overlapping on claims 11 and 13A? I thought you said you were going to explain why these overlapped on those two claims.

A These people that bought these claims from me --.

BY MR. AHO: Charleston Stone Products.



BY THE WITNESS: Don't they say that those two claims are part of their claims.

BY MR. AHO: Right.

A Well, I didn't sell those two claims to them. I sold only those outside. They have no interest in those two claims.

BY MR. AHO: That's why there is an overlap at the present time and they claim title.

BY THE WITNESS: They have no jurisdiction there at all.

Q Do you know why Browner went out of business in 1958?

A Yes, sir, I do.

Q He went broke, didn't he?

A No, sir, he didn't.

Q He didn't?

A No, sir. He sure didn't.

Q Do you know he was sued for non-payment of rental on these properties?

A Would you like me to --.

BY MR. AHO: No. Do you know that?

A He was sued, but I know why he was sued, too.

Q And you say he didn't go broke in 1958?

A That's right.

Q He ceased operations, though.

A He ceased operations. I finished the job.

Q From whom did you acquire the claims.

A From Mr. Browner and his wife.

Q Did Browner actually own the claims, or was he leasing them at the time?

A No. He had them.

Q He had full title?

A Full title.

Q And when he went out of business, you acquired title to the claims from Mr. Browner?

A There was never no lien ever put against the claims.

Q When did you sell everything -- all of the Charleston claims except your claims, to Charleston Stone Products?

A Well, it must have been right around 1963.

Q You had them five years?

A Yes, I had them five years. I forgot to check my records on this, now, because I don't remember. It's been quite some time since this happened.

BY MR. AHO: You see, we had another contest and I'm going to have the Examiner take judicial notice of the Hearing Examiner's decision of Grayden Holt regarding its Charleston group of claims which was rendered, I think, about November, December of last year. But anyway, I will, in a brief, make reference to that and we have the legal evidences as to when the Charleston Stone Products actually acquired the claims.

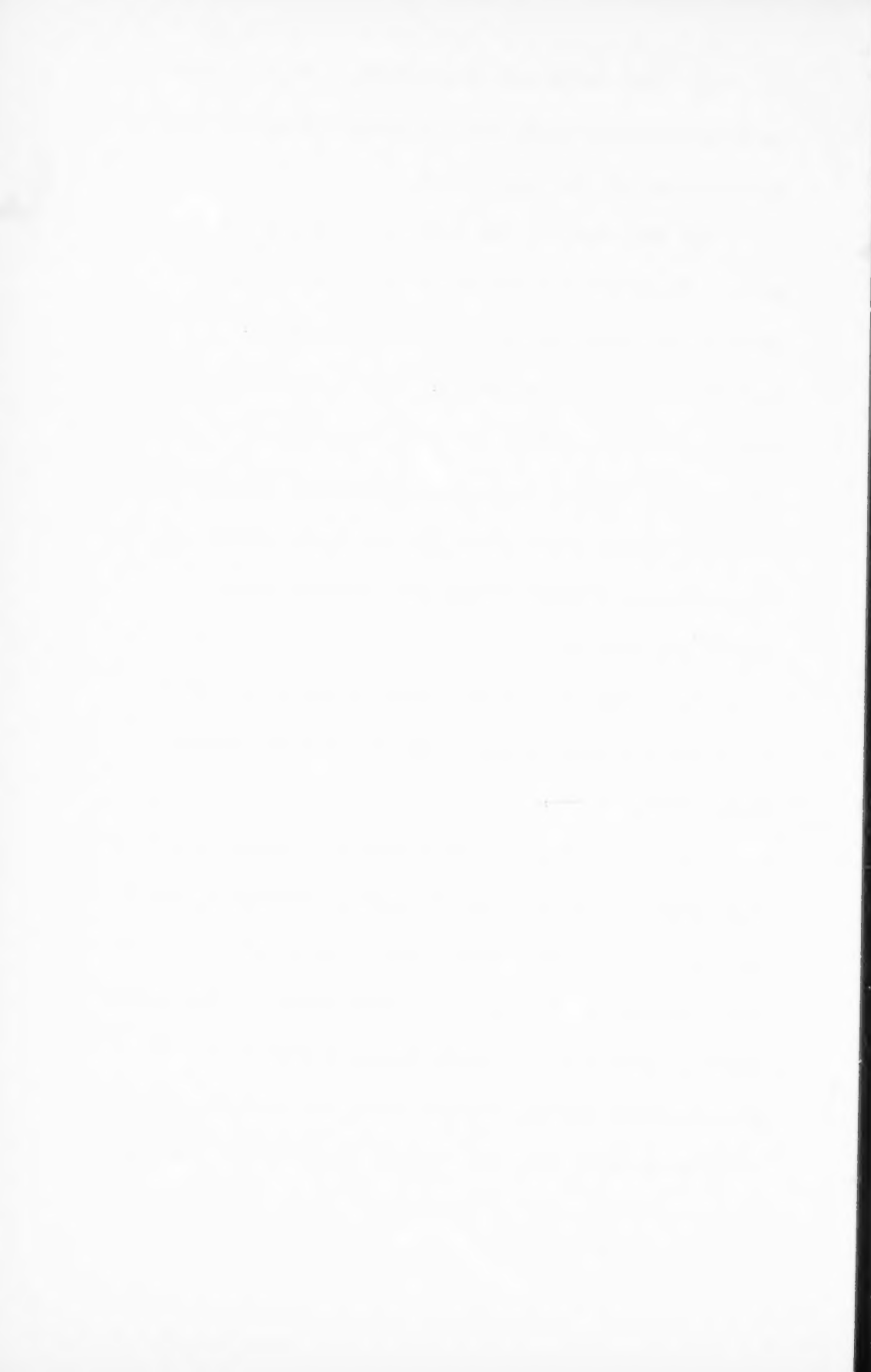


BY THE HEARING EXAMINER: Was there determination made as to ownership by that contestee of 11 and 13A?

BY MR. AHO: As far as I know, it was. Whether we stipulated that they owned, or whether they presented documentary evidence of their ownership, I don't recall. But anyway, whatever reference there was to ownership would be in that case and also as to date when Charleston Stone Products claim they acquired title.

Q (By Mr. Aho) Now, actually, most of your removals were made in the draws, were they not?

A At that time I didn't have big equipment. I did have small loaders, so I had to take that what was loose and available, and close to the road. The road went right by it, and every time a flood would come down, maybe once or twice a year -- one every two or three years, it would



come right back in and fill it and I would go right back and dig it up.

Q With a loader, you would go right down the draw and scoop it out of the draw?

A Yes, loaded it right off the draw. The road went right up the draw there, right across my claims there. There's where I did my selling of my gravel.

Q Are you in the sand and gravel business at the present time?

A At this time, in Las Vegas, I sold my business to my son in law and my foreman and they are operating and still run the business and they are hauling the gravel.

Q From these claims involved in this contest?

A Yes, sir.

Q They are doing the same as you did?

A Well, they haven't hauled any this last year. We hauled in about 11,000 yards

and stockpiled it and I think he's maybe got 30, 40 yards left of gravel -- pea gravel that he sells for houses.

Q I believe you stated you did stockpile some material on these claims, is that correct?

A Yes, sir, we did stockpile all the time, right here where this evidence is, right here.

Q That would be in about 1960?

A Well, when I owned all the claims.

Q Which is after 1958?

A Yes, after 1958. We stockpiled right in this area, right here.

Q You are pointing now off the western boundary of Charleston 24/39 claim?

A Yes, there are two stockpiles. One by this claim and one by this claim. There is evidence right there.

Q And that stockpile would be on what claim, as shown on exhibit G-2? Would that be on 10?



A Well, I would have to go up there and see, but I believe it is right up there.

Q That's claim 10 and claim 9. Actually, isn't the great big excavation out on the Charleston claim on claim no. 10?

A The last is, yes.

Q The great big one. Almost all the removal has been from claim 10, hasn't it.

A After I sold them, they went in there and excavated it, see. They moved a crusher in, of their own. They moved in above me and I was down below. They did that after they moved in.

BY MR. AHO: I have no further questions of this witness.

BY THE HEARING EXAMINER: Do you wish to make any further statement after this cross examination, Mr. Sullivan?

BY MR. SULLIVAN: I don't think so.



BY THE HEARING EXAMINER: You may be excused, then.

BY MR. AHO: I will recall Mr. Schessler for one or two questions.

REDIRECT EXAMINATION

BY MR. AHO:

A Mr. Schessler, you were present when Mr. Sullivan was testifying?

A I was.

Q You heard him make reference to a road on top of the hill at the west end of the claim?

A I heard reference to the road.

Q Did you see the road?

A May I describe it?

BY MR. AHO: Yes.

A I use exhibit G-3. I didn't go into this earlier, but the road to which we are referring is the one that Mr. Sullivan said he built on the west end of the claim. No argument who built it. This road leaves the draw approximately here --



it may be a little farther along, but it leaves the draw and goes up on the hill. As it goes up on the hill, it comes around right past the Section corner, 34/35, 2 and 3. This is on a hill and as soon as -- right after leaving the Section corner, it curves and goes back down and follows the hill. You can look out over from this hill and this light colored area -- when I was being questioned earlier, I'm sorry I forgot -- but that is an area along side the road, a kind of parking area, scraped area, light colored area. It is not an excavation. This is a hill. You look out over the excavated area at what is claim no. 10 as shown on exhibit G-2. In essence, this is the description of the road in the west end of Charleston 24/39.

Q You say that the whitened area common to Section 34 and 35 may have been a parking area used in connection with the large operation on claim 10?



A No. I would say it is simply a scraped off area as of now.

Q You heard Mr. Sullivan testify as to running the loader down the draw and picking up the gravel, did you not?

A Yes, I did.

Q Where does that gravel come from. Is it loose gravel?

A It is loose gravel from the wash. It comes 'way up -- that's a poor description -- but it is brought down by torrential rainstorms, flooding from time to time from the mountains to the west.

Q It is entirely possible the gravel was loose, you could shovel it up and you wouldn't know it had been shoveled?

A It is possible, but not very probable, because it -- you see the colored patterns on --

(Recess taken to change tape on tape recorder.)



BY THE WITNESS: To continue, what we were doing was dealing with the colored patterns on the aerial photograph as related to the possibility of excavations having been filled in by flooding. Now, I will point here on the west end of Charleston 24/39 in that vicinity on exhibit G-3. I point to the area which Mr. Sullivan has marked, I think, with an "A" here. And by referring to this pattern, notice the darker dots within the darker pattern. This is vegetation, creosote, even some yuccas, what have you, various small plants. They are very obvious in here. We extend this up a little farther to the west, just off the west end line of Charleston 24/39 and the large excavated area within Charleston no. 10 is quite visible and quite distinct. When we speak about the possibility of floods filling in these excavations, large or small, the excavation on Charleston no. 10 and the

stockpiles had existed in this place as affected by the wash, essentially the same as they are now, since I have been in the Las Vegas District. Flooding has occurred. Last year we had a rather severe flood. I don't think this picture would show too much different right now -- if it were taken right now, from what it shows in 1965.

Q When you referred to the large excavation on claim 10, you were referring to the claim 10 as depicted on exhibit G-2?

A I am. That claim 10, the excavation of that stockpile are overlooked by the road where it comes over the hill on the west end of Charleston 24/39. It passes right by the Section corner, Sections 34/35 and 2 and 3 as shown on exhibit G-3.

BY THE HEARING EXAMINER: Mr. Schessler, could you place the approximate center of the large wash that you have described, by a dashed line on exhibit G-3.



BY THE WITNESS: I didn't do that.

BY THE HEARING EXAMINER: I know, but if you could do that.

BY THE WITNESS: That is pretty much -- can I use blue? I'm not very sure I can do this too well, because this is not a stereographic -- and it is not quite -- it's not really positive here. I'll do it in black, which I have available. It would be, I suppose -- I'm dashing it in black. It's not very obvious here, but the line itself -- the dashed line itself, is along what shows us the rill, the center of the channel you might say, were there is evidence of water forming channels, and down through here, it widens out down in here for a short distance. I am referring to exhibit G-3, black marks I am putting on it. The edge I will put a solid line just north of the western portion of the Charleston 24/39, a part known as no. 11. There is an old -- what Mr. Sullivan refers



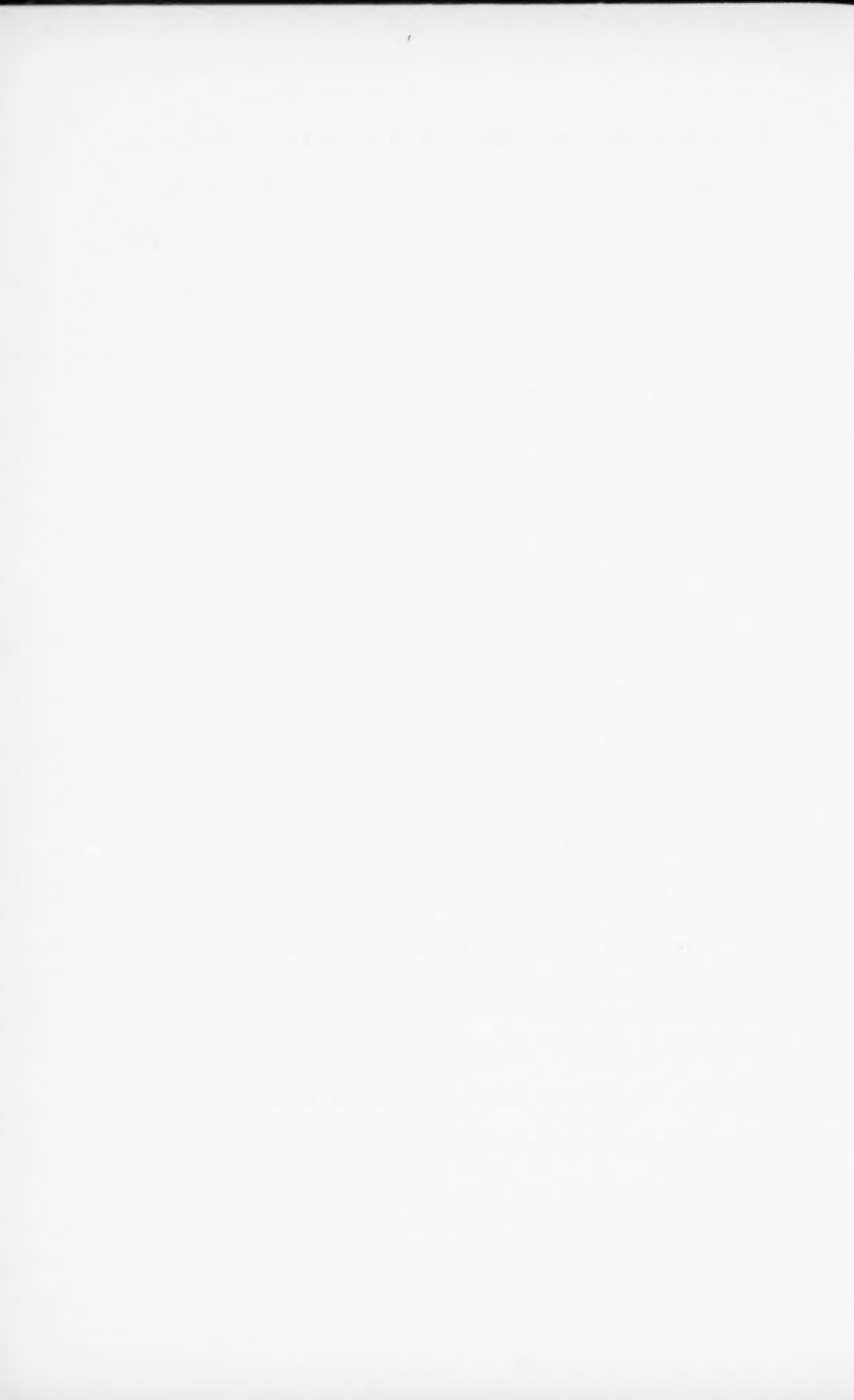
to and I do too, as the old road. It is passable, by the way, in this area. And that road is fairly close to the hill. The hill -- by referring to hill I mean the land rises to the south of this rather abruptly and the new road comes over the hill and passes down into the draw at the end beyond the west end line of 24/39 claim.

BY THE HEARING EXAMINER: The new road is more into the interior of these claims that are presently under contest?

BY THE WITNESS: That is correct. If you like, I can make this a little more definite. The black doesn't show up too well. When you look at it closely --.

BY THE HEARING EXAMINER: As long as it shows, that's all.

Q (By Mr. Aho) If you were to rely solely on going down the draw and picking up the loose gravel, how much quantity would there be to scoop up on the two claims?



A Well, very little. I couldn't make any estimate to actual quantity, but it's a very minor part of the area encompassed by either claim.

Q Do you agree with Mr. Sullivan's statement that the gravel bed may extend over a hundred feet in this area?

A I don't know why not.

Q In your opinion, are there sufficient excavations on the two claims to enable anyone at the present time to determine the depth of the deposit on the two claims?

A Not on the claims, no. Not that I have seen on the claims.

Q Do you have any rough estimate of the total amount of gravel on the two claims?

A It would be an essential depth -- I'll have to separate this answer, because on the Charleston Spur no. 1 there is not much. Less than, or approximately, three



acres of actual sand-gravel type deposit. Its depth, I do not know. On the Charleston 24/39, one could say, for all practical purposes, within a reasonable length of time, unlimited.

Q A million cubic yards?

A Easily?

Q Claim 14, as shown on exhibit G-2, has an excavation on the westward boundary, does it not?

A It does.

Q Is that also shown on exhibit G-3?

A It does.

Q And where is it shown on exhibit G-3, the excavation on claim 14?

A It is in the approximate center of Section 35, south of the center line of the Section. It would be immediately north of claim 24/39. I don't quite know how to describe this for this illustrated purpose, but its opening is directly off the road in the canyon.

Q Did you see the excavation there when you made your examination this year?

A I did.

Q It is still visible?

A Oh, yes.

Q It was visible when the aerial photo, exhibit G-3, was made in 1965.

A That is correct.

BY MR. AHO: That's all.

BY THE HEARING EXAMINER: Mr. Schessler, did you make any investigation or review of the title documents respecting the conflict in ownership of claims between Mr. Sullivan and the Charleston Company?

BY THE WITNESS: I did not. This was done by the examiner who did the work from which the contest was initiated.

BY THE HEARING EXAMINER: In the contest which was versus Charleston Stone, do you know if Mr. Sullivan was named in that case?

BY THE WITNESS: Offhand, I do not.



BY MR. AHO: No, he was not.

BY THE HEARING EXAMINER: And Charleston Stone, the records show here, was not named in this proceeding.

BY MR. AHO: Correct.

BY THE HEARING EXAMINER: So, the most that we can say for the time being is that there apparently is an overlap.

BY MR. AHO: There is an overlap and the Bureau is contesting the title of both claimants to the land involved in these two series of claims.

BY THE WITNESS: May I add that I merely acted on the assumption. I knew that these had been contested in the Charleston Stone Products case, but I also knew by description that they are supposedly a part of the Charleston 24/39 claim. I merely acted on that premise.

BY THE HEARING EXAMINER: Do you have any questions, Mr. McNutt?



BY MR. McNUTT: I have a couple of questions I would like to add.

BY THE HEARING EXAMINER: Mr. Schessler, will you take your seat at this point?

BY THE WITNESS: Yes, sir.

RE-CROSS EXAMINATION BY MR. McNUTT:

Q I have to go back and refer to exhibit G-3, again, while I take a good look at this time. You said that the road, and I don't recall if it is the old road or new road. Anyway, the road that goes over the hill, goes right past the Section corner between 34 and 35, 3 and 2?

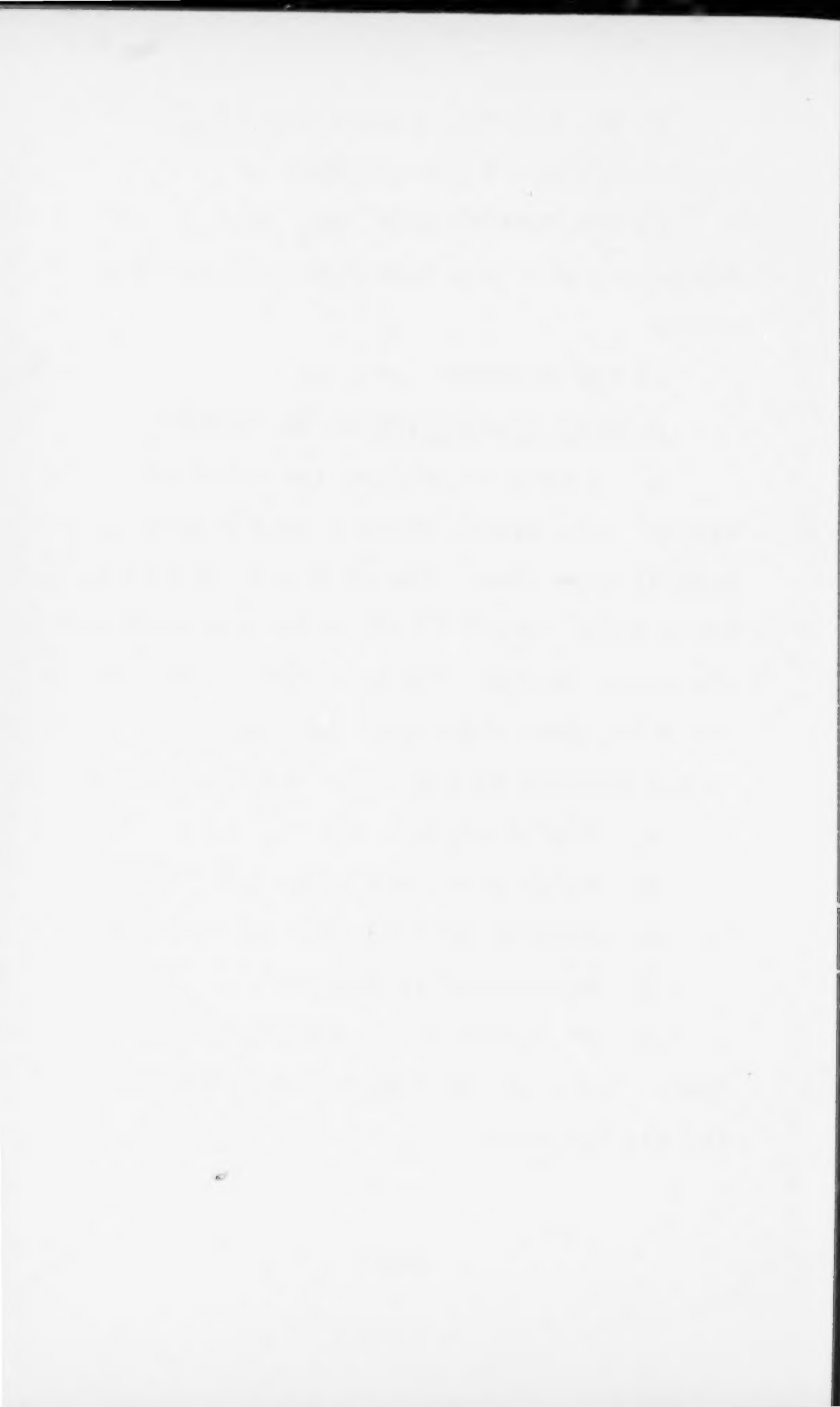
A That's right.

Q Which side does it go on?

A Section corner, east of the road.

Q Approximately how far?

A Oh, guessing, probably 20 or 30 feet. Maybe not that much. It's not very far off the road.



Q Is it possible that this large excavation in claim 10 could also extend across the Section line between 34 and 35 into claim 11?

A I don't think so, no, sir.

Q The wash that we have been talking about is pretty flat, isn't it?

A It is flat on its bottom. Yes, it is.

Q Any flooding would be equal, primarily?

A I'll have to agree with you, yes. But I THINK a lot of this stuff acts as a -- you get a slush. I think when these things get with a little bit of water, a little of it -- a lot of it, the whole mass tends to act as a dump and you will have some of these materials spilled over the surface, so they affect -- I think this one of the reasons for these flat washes, lots of times. It's like a -- the beds that they use for these various ores,



for instance, separating ores, suspension in air, whereas here, it's a suspension in water. There's a term for it, I can't just recall it right now. But I'd agree with you, yes. That's just my theory on some of these washes out there.

BY MR. McNUTT: I think that's about all.

BY MR. AHO: I have nothing further.

BY THE HEARING EXAMINER: You may be excused, Mr. Schessler. Both sides, having presented their oral testimony in this matter, I will briefly describe the regular briefing procedure in a case of this type. If the briefs are submitted, the government usually submits the first brief after a time has elapsed when the transcript is delivered. Then the contestee has the right to respond to the government's brief and, if permission is granted, the government can file a reply brief if there is any new material brought

up in the responding brief. Mr. Aho, did you wish to say anything?

BY MR. AHO: Yes. I will submit a short opening brief 45 days after receipt of transcript.

BY THE HEARING EXAMINER: It is so ordered. The government may have the privilege of submitting an opening brief within 45 days after receipt of a copy of the transcript from the Office of hearings & Appeals. Did Mr. Sullivan wish to submit a responding brief?

BY MR. McNUTT: I am sure we will.

BY THE HEARING EXAMINER: Following receipt of a copy of the government's brief -- service of that -- Mr. Sullivan will have the right to file with the Office of Hearings & Appeals and serve, of course, on Mr. Aho, a brief in response to the government's brief. Would 30 days be enough for that?

BY MR. McNUTT: I think so.



BY THE HEARING EXAMINER: That brief should be submitted within 30 days after receipt of the government's brief. Is there anything further to be taken up at this time?

BY MR. AHO: No, except I hope the record is clear as to -- I serve my brief, I guess on Mr. Sullivan, with a copy to you, but is his address on record so I will know where to send it?

BY THE HEARING EXAMINER: Well, we have had some difficulty with Mr. Sullivan's address, but he assures me, notwithstanding the fact we have been getting letters back from the box, that his address is Post Office Box 3186, North Las Vegas. The portion of this case devoted to taking of oral testimony is closed.



"This is to certify that the attached proceedings before the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT in the matter of:

UNITES STATES OF AMERICA, Contestant,
vs.

Frank R. Sullivan, Contestee
Claim Nos. N-065732 and N-065733
FEBRUARY 18, 1971 taken at
United States Federal Building
300 Las Vegas Boulevard, South
Las Vegas, Nevada, 9:30 O'clock A.M.
Room 4-612

were held as herein appears, and that this is the original transcript thereof for the file of the Department.

Henrietta Vaughn
Official Reporter